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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936 7

No. ~~785~~ 11

THE UNITED STATES OF AMERICA, PETITIONER

vs.

ANGIE CROOK WILLIAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 9, 1937
CERTIORARI GRANTED APRIL 26, 1937

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 795

THE UNITED STATES OF AMERICA, PETITIONER

vs.

ANGIE CROOK WILLIAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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1 [Placita omitted.]

2 In United States District Court, Northern District of Illinois, Eastern Division

No. 41493

ANGIE CROOK WILLIAMS

vs.

UNITED STATES OF AMERICA

Declaration

Filed Nov. 9, 1932

Comes now the plaintiff and for cause of action against the defendant, complains and alleges:

I

That the plaintiff is a resident of Cook County, State and District of Illinois, United States of America.

II

That the defendant is the United States of America and that this action is brought and prosecuted under authority provided by an Act entitled "An Act providing for the bringing of Suits Against the United States, amended March 3, 1887, as amended," and Section 19 of the World War Veterans' Act.

III

That heretofore on the 13th day of January, 1919, Benson Charles Williams enlisted in the military service of the United States.

3 That thereafter on the ------ day of ----------, 1919, upon application of said Benson Charles Williams, he being then and there in the military service of the defendant, there was issued to him by defendant a certificate of War Risk Insurance whereby and in consideration of the premiums paid and to be paid by said Benson Charles Williams said defendant obligated itself to pay to said Benson Charles Williams, among other things, in the event of total and permanent disability incurred during the life of said insurance contract, or, in case of death, to his beneficiary, plaintiff herein, the sum of $10,000.00 in monthly installments of $57.50 each, commencing at the date of disability or death and continuing as long as said disability existed or until there had been paid 240 of said monthly payments. That said policy of insurance was never delivered to said Benson Charles Williams, or if same were delivered to him the same has been lost.

IV

That while in the military service of the United States, and while said certificate of insurance was in full force and effect, said Benson Charles Williams was lost at sea and was officially declared dead by the United States of America, defendant, as of June 30, 1921; that by the terms of said contract of insurance, and because of said death, said defendant became obligated to pay to and is indebted to plaintiff as beneficiary under said policy of insurance, the sum of $57.50 per month from the said 30th day of June 1921 until there has been paid to plaintiff herein a total of 240 of said monthly payments.

V

That said Benson Charles Williams, during his lifetime, did pay all the premiums on his part to be paid under said certificate of insurance, and did perform all the covenants and agreements by him to be performed under said contract of insurance and said certificate of insurance is now, and has ever since the _____ day of _____, 1919, in full force and effect and since said 30th day of June 1921 has been matured because of said death of said Benson Charles Williams, as aforesaid.

4

VI

Plaintiff further alleges that said Benson Charles Williams was officially declared dead by the United States of America as of June 30, 1931, and that because of said death said certificate of insurance matured and became due and payable to this plaintiff, as beneficiary therein, in the sum of $57.50 per month from said 30th day of June 1921. That during the year 1924, and again on or about June 30, 1931, plaintiff made written demand upon said defendant through its Veterans' Bureau for the payment of said War Risk Insurance and that the said defendant took said claim under consideration and rendered a final decision and rejection thereof on or about the 7th day of November 1932, at which time there was a disagreement between said plaintiff and said Veterans' Bureau as to the payment of said insurance and that said disagreement still exists. That by reason of said demand and final rejection, as above alleged, the Statute of Limitations would not bar the bringing of this action until after the filing of this suit.

Wherefore plaintiff prays for judgment against the defendant as follows:

First. That said defendant be ordered and directed to pay to said plaintiff, as beneficiary under the aforesaid policy of insurance, the sum of $57.50 per month from the said 30th day of June 1921 and to continue paying the said sum of $57.50 per month until a total of 240 of said monthly payments have been made, pursuant to the terms and provisions of the insurance policy heretofore mentioned.

Second. For the costs of this action and all other just and proper relief.

W. J. DOYLE and FRANK C. WADE,
Attorney for Plaintiff.

[*Duly sworn to by Angie Crook Williams, jural omitted in printing.*]

5 In United States District Court

Answer

Filed April 5, 1935

Comes now the defendant and files its answer to the declaration of

I

Defendant being without information or belief as to the residence of the plaintiff respectively prays that proper proof be made thereon.

II

The defendant admits that this law suit is brought under and by reason of the provisions of the World War Veterans' Act 1924, as amended.

III

The defendant admits that Benson Charles Williams was inducted into the Naval Service of the United States on January 13, 1919. The defendant further admits that on January 13, 1919, the said Benson Charles Williams applied for and there was issued to him by the defendant a contract of War Risk Term Insurance which provided that so long as the contract was kept in force by reason of the payment of the monthly premiums thereon, the defendant would pay to the said Benson Charles Williams the sum of $57.50 (Fifty Seven Dollars and Fifty Cents) per month if he became totally and permanently disabled, and would pay a like sum to his
6 designated beneficiary if the said insured died while said contract remained in full force and effect.

IV

The defendant denies that the said Benson Charles Williams ever became totally and permanently disabled. The defendant admits that the said Benson Charles Williams was lost at sea on the U. S. S. "Conestoga" which left San Francisco on March 25, 1921, with the said Benson Charles Williams abroad. The defendant admits that said insured was lost at sea and officially declared to be dead by the United States Navy Department as of June 30, 1921. The defendant denies that it became obligated to pay to, or indebted to the plaintiff or any other persons under said contract of insurance in the sum of

$57.50 (Fifty Seven Dollars and Fifty Cents) per month from June 30, 1921, or from any other date for the reason that on July 20, 1920, the said insured by written request cancelled said contract of insurance and paid no premiums thereon after July 1920, and said contract lapsed and became of no force and effect after midnight of August 31, 1920.

V

The defendant denies that the said Benson Charles Williams paid any premiums on said contract of insurance after the premium for the month of July 1920, and denies that any premiums were paid for or on behalf of said contract, and denies that said contract matured on June 30, 1921, or at any other date.

VI

The defendant alleges that the only claim for insurance benefits under this contract was received in the Veterans' Administration July 3, 1931. That the claim was denied by the Administrator of Veterans' Affairs November 5, 1932, and a letter notifying the claimant of this fact mailed out on the same day. The defendant further admits and alleges that said denial was received by the plaintiff herein November 7, 1932, and that by reason of these facts said law suit is barred under the Statute of limitations, not having been timely filed.

7 Wherefore, defendant prays that judgment be entered for the defendant and against the plaintiff, with costs.

Dwight H. Green,
DWIGHT H. GREEN,
United States Attorney.
By: Edward Sullivan,
EDMOND SULLIVAN,
Assistant United States Attorney.
Frederick H. Maughner,
FREDERIC H. MAUGHMER,
Attorney, Department of Justice.

IN UNITED STATES DISTRICT COURT

Reply

Filed May 13, 1935

First Paragraph of Reply

Comes now the plaintiff in the above entitled cause and for first paragraph of reply to defendant's answer filed herein denies each and every allegation therein contained, which controverts or tends to controvert any of the material allegations in plaintiff's declaration contained.

FRANK C. WADE,
WM. J. DOYLE,
Attorney for Plaintiff.

Second Paragraph of Reply

Comes now the plaintiff and for her second paragraph of reply to defendant's answer and alleges that at the time of the enlistment of said insured and the execution of the insurance contract herein involved said insured was an infant under the age of twenty-one (21) years, and that said defendant required said plaintiff herein as mother of said infant to sign a release and written consent for said enlistment and *and* that said release or written consent had a provision therein that in consideration of said plaintiff executing said
8 written release and consent, the said defendant herein would issue to said insured a certificate of war risk insurance, payable to said plaintiff, extending through the period of said enlistment or until said insured became twenty-one (21) years of age. That he became and was a party to said insurance contract and that said pretended cancellation of said insurance as alleged in said answer without notice to plaintiff was void and of no force and effect.

Plaintiff further alleges that at the time of said enlistment and the issuance of said insurance said insured executed and delivered to said defendant written authority to deduct from his pay or any other moneys due him, premiums on said insurance as the same became due, and that at all times during said enlistment and after said pretended cancellation of said insurance there was due and owing from said defendant to said insured, over and above all legal credits, set-offs, or counter-claims, a sufficient sum of money to pay all premiums due upon said insurance as the same became due, and that by reason thereof said insurance remains in full force and effect until the death of said insured.

Plaintiff further alleges that immediately upon the notice of said pretended cancellation she rescinded the same and notified said defendant of said recision and offered and tendered to pay to said defendant any and all premiums that might be due thereon.

Plaintiff further alleges that she now tenders unto the Court any and all premiums that may be due on said contract of insurance.

Wherefore, Plaintiff prays for judgment as per said declaration.

FRANK C. WADE,
WM. J. DOYLE,
Attorneys for Plaintiff.

Third Paragraph of Reply

Comes now the plaintiff and for her third paragraph of reply to defendant's answer alleges and shows to the Court that at the time of said pretended cancellation of said insurance as set out in said answer, the said insured was an infant, that said insurance was a necessity for said insured, and that said pretended cancellation thereon was against the interest of said infant and was there-
9 fore void. That because said insured was an infant said contract cancelling said insurance was voidable, subject to being

avoided by said infant during his life time and in the case of his death before he reached his majority was subject to recision by his personal representatives. That said plaintiff herein is the personal representative and heir of said insured, who died before he reached his majority and that as soon as said plaintiff herein was informed of said contract cancelling said insurance, she, as beneficiary and personal representative of said deceased infant, rescinded said contract, cancelling said insurance and notified said defendant of the same, and tendered and offered to pay all premiums that may have been due on said insurance and that as said beneficiary and personal representative of said deceased infant, she now offers to pay and tender unto Court any and all premiums that may have been due on said insurance contract at the time of the death of said insured, together with interest thereon.

Plaintiff further alleges that at all times after said pretended cancellation of said insurance set out in said answer there was due and owing from said defendant to said plaintiff uncollected pay in an amount in excess of any and all premiums that thereafter became due before the death of said insured and that at the time of the issuance of said insurance the said insured gave written authority for the deduction of said premiums from his pay or from any other moneys due him for the payment of his premiums as they became due and therefore said insurance remained in full force and effect until the death of said insured.

Wherefore, Plaintiff prays for judgment as per said declaration.

FRANK C. WADE,
WM. J. DOYLE,
Attorneys for Plaintiff.

10 In United States District Court

Judgment

Entered Oct. 11, 1935

Now the issues herein joined, having been submitted to the Court, and the Court having duly considered such issues, doth file herein its findings of fact and conclusions of law, finding said issues in favor of the plaintiff and against the defendant.

It is, therefore, on this October 11th, 1935, Ordered, Adjudged, and Decreed, that plaintiff, Angie Crook Williams, have and recover from the defendant, the United States of America, the sum of $57.50 per month, from and after June 30, 1921, for a period of 240 months, and that defendant, the United States of America, deduct from the aforesaid, the sum of ten percent thereof and pay one-half of the same to Frank C. Wade, of Terra Haute, Indiana, and one-half

to W. J. Doyle, for their services as attorneys for said plaintiff in said cause.

PHILIP L. SULLIVAN,
United States District Judge,
for the Northern District of Illinois.

Dated this 11 day of October 1935.

To the entry of which judgment the defendant objects and excepts.

Notice waived:

M. L. IGOE
(E. S.)

11 In United States District Court

Findings of fact and conclusions of law

Filed Oct. 11, 1935

On this 11th day of Oct., 1935, the above-entitled cause coming on to be heard before the Court, the parties appearing by their respective counsel, a jury having been waived, and the Court being fully advised in the premises, makes the following findings of fact and conclusions of law.

Findings of fact

I

The plaintiff, Angie Crook Williams, is and was at the time of filing this action, a resident of the northern district of Illinois.

II

As beneficiary of said insurance, the plaintiff filed claim for said insurance in 1921. The defendant rendered final rejection of said claim on November 5, 1932, which was received by plaintiff in Chicago on November 8, 1932, and suit was filed herein on November 9, 1932.

III

The insured, Benson Charles Williams, was born on the 27th day of August, 1901, and Angie Crook Williams, plaintiff herein, is the mother and R. E. Williams, her husband, is the father of said insured.

IV

On the 13th day of January 1919, the said Benson Charles Williams enlisted in the United States Navy for the period of his minority.

V

On the 13th day of January 1919, there was issued to said Benson Charles Williams, who was then in the military service of the
12 United States, $10,000.00 War Risk Insurance, sued upon herein, in which the plaintiff, Angie Crook Williams, was named beneficiary.

VI

At the time of the issue of said insurance, the said Benson Charles Williams executed a written request that the premiums be deducted from his pay each month during said enlistment, and, in compliance with said written request, the said monthly premiums were deducted each month after January 13, 1919, up to and including the month of July 1920, but no premiums were deducted thereafter.

VII

At the time of said enlistment, the plaintiff Angie Crook Williams, mother, and R. E. Williams, father of the said Benson Charles Williams, executed a release and waiver or consent of parents, consenting to said enlistment and releasing their claim to his pay during said enlistment, thereby ratifying and approving of all said transactions. The said consent executed by said parents contained a typewritten clause providing that said consent was executed on condition that the said Benson Charles Williams carry War Risk Insurance in the sum of $10,000.00 in behalf of his mother, the plaintiff, during said enlistment. That in open court counsel for plaintiff called upon counsel for defendant to produce the enlistment documents relative to the enlistment of Charles Benson Williams in default whereof oral testimony was received to the effect that, and the court finds as a fact, the matters set forth in paragraph VII.

VIII

On July 20, 1920, the veteran, Benson Charles Williams, executed a document reading as follows:

"I hereby request that my insurance be reduced from $10,000.00 to none Dollars.

"(Signed) BENSON CHARLES WILLIAMS.

"Witness to signature,
"E. D. SOUTHWORTH,
"*Lieut. U. S. N. R. F.*"

13 IX

In compliance with said instrument executed by the said Benson Charles Williams, on the 20th day of July 1920 said defendant ceased

to deduct the monthly premiums from the monthly pay of the said Benson Charles Williams, but at all times thereafter, up to and including the month of June 1921, the said Benson Charles Williams had more pay due him than the amount of all premiums due on said insurance.

X

The said Benson Charles Williams died on the 30th day of June 1921.

XI

Immediately upon notice of the death of the insured, the plaintiff herein, as beneficiary of said insurance, in 1921, made written demand upon defendant for the payment of said insurance.

XII

Upon receipt of said demand and claim for said insurance the defendant notified plaintiff of said instrument executed by insured on July 20, 1920, above set out. That immediately upon receipt of said information said plaintiff rescinded said pretended cancellation of said insurance, offered to pay any and all premiums that may have been due thereon, and reiterated her claims as beneficiary for the payment of said insurance.

XIII

That Frank C. Wade of Terre Haute, Indiana, and W. J. Doyle of Chicago, Illinois, have performed legal services for plaintiff in the prosecution of her suit of the reasonable value of ten per cent of all payments to be made on said certificate.

Thereupon the court makes the following Conclusions of Law:

14 *Conclusions of law*

1. The Court has jurisdiction of this case under Section 19 of the War Risk Insurance Act.

2. At the time of the death of the said Benson Charles Williams, said War Risk Insurance in the sum of $10,000.00, wherein the plaintiff herein, Angie Crook Williams, was beneficiary, was in full force and effect.

3. That by the terms of said insurance, the defendant became and is indebted to the plaintiff in the sum of $57.50 per month for each and every month for a period of 240 months, beginning in the month of July 1921.

4. That there is due Frank C. Wade of Terre Haute, Indiana, and William J. Doyle of Chicago, Illinois, ten percentum of said monthly

payments for their legal services rendered plaintiff in the prosecution of this case.

Approved this 11 day of October 1935.

PHILIP L. SULLIVAN,
Judge, United States District Court
for the Northern District of Illinois.

To the actions and finding of the Court the defendant objects and excepts.

Notice received:

M. L. IGOE,
E. S.

In United States District Court

Bill of exceptions

Filed March 11, 1936

Be it remembered that the above entitled cause came on for trial on the eighth day of July 1935 before the Honorable Philip L. Sullivan, District Judge, without a jury, on the trial of the
15 merits, the parties having by stipulation in writing filed therein, waived a trial of the issues by the jury and submitted the same to the court for trial, the parties being represented by counsel as follows: William J. Doyle and Frank C. Wade, attorneys for the plaintiff; Edmond Sullivan, Assistant United States Attorney, for the defendant. Whereupon the following occurred, and the plaintiff, to maintain the issues on his part, introduced the following evidence:

Stipulation of Facts

It was stipulated and agreed by the parties to the said cause as follows:

That Benson Charles Williams was born August 27, 1901. Benson Charles Williams enlisted in the United States Navy January 13, 1919; Benson Charles Williams served continuously thereafter in the United States Navy up to and including March 25, 1921, when he, a member of the crew of the U. S. S. "Connestoga", left San Francisco, California, for Pearl Harbor, Hawaii, enroute to Samoa, and that since said date the ship, crew, and officers have never been heard of; that on July 22, 1921, the United States Navy Department declared the ship lost with all aboard, and all officers and members of the crew of the U. S. S. "Connestoga", Benson Charles Williams, were declared officially dead as of June 30, 1931.

That on January 13, 1919, the veteran, Benson Charles Williams, applied for and there was issued to him a contract of war risk term insurance in the principal sum of $10,000; that Angie Crook Williams, the plaintiff herein, and described in the application for insurance as mother of the insured, was designated beneficiary under said

insurance contract; that on July 20, 1920, the veteran, Benson Charles Williams, executed a document reading as follows:

"I hereby request that my insurance be reduced from ten thousand dollars to None dollars."

—signed by the veteran Insured, Benson Charles Williams, the signature being witnessed by Lieutenant C. Southward.

That on July 21, 1920, the United States Navy Department discontinued the insurance of the veteran on their pay roll and collected no premiums on the said insurance contract after the premium for the month of July 1920; that premiums on the said insurance contract were paid from the date of the application therefor up to and including the premium for the ninth of July 1920, and that the disbursing officer of the pay corps of the United States Navy on July 20, 1920, notified the war risk division that the checkage of premiums on the monthly payroll of Benson Charles Williams had been
16 discontinued and that the date of the last checkage of premiums was July 1920.

That the records of the Veterans' Administration do not disclose whether or not any wages were paid to the veteran Benson Charles Williams covering any period of time after April 12, 1921. The records of the naval department and the Veterans' Administration file do not disclose that the veteran ever enlisted a second time, but was rather serving on his first enlistment at the time he was lost.

ROY W. JOHNS, called as a witness on behalf of the plaintiff, being first duly sworn in the above entitled cause, testified as follows:

Roy W. Johns lives at 10410 South Hoyne Street, Chicago, Illinois; is a lawyer connected with the legal department of Swift & Company; has known Mrs. Williams, the plaintiff, and her husband approximately 20 years; remembers some papers in connection with Mr. and Mrs. Williams giving their consent to the enlistment of their son, Benson, at the time of his joining the Navy; was a close friend of Benson Williams; was 16 or 17 years old at the time.

Whereupon the defendant by his counsel objected to the testimony of the witness, Roy W. Johns, wherein it was offered to be proved by him of the contents of an alleged consent of an alleged declaration and agreement made between the plaintiff and a recruiting officer. The objection was based on the ground that the alleged written contract would be the best evidence for the further reason that it was immaterial and incompetent since no agent or employee had authority to bind the United States Government by any such alleged contract even if proved, which objections was overruled, to which ruling of the court the defendant then and there duly accepted.

Q. Have you got any information with reference to their giving their consent to the enlistment of their son Benson at the time of his joining the Navy?

A. I have.

Q. I wonder if you will tell the circumstances to the Court.

The COURT. Where was it?

A. In Chicago.

The COURT. I know, but where?

A. At the time the papers were signed.

17 The COURT. Yes.

A. May I explain this. Benson and I were very close friends.

The COURT. The deceased?

A. The deceased and I were very close friends, and had been friends for four or five years prior to this.

The COURT. How old were you?

A. Sixteen and seventeen. I would be seventeen and he would be eighteen the following March when he joined.

Mr. MAUGHMER. For the purpose of the record, I would like to say we should have the consent declaration for the reason that that is not the best evidence, and for the further reason that it is immaterial for the purpose of this lawsuit since no agent, no employe, no individual has any authority to bind the government, and any such——

The COURT (Interposing). It becomes the best evidence if he served notice. He may go ahead.

(To which ruling of the court the defendant then and there duly excepted.)

The WITNESS. Benson joined the Red Cross camp, but being too young and not eligible, he was mustered out of the Red Cross. Shortly after he returned, he worked in the post office as a substitute clerk. Shortly after he came to me and said he wanted to join the navy. Then he went down to a recruiting officer and attempted to enlist. He said as he was under eighteen years of age, it would be necessary to have his parents' consent. If over eighteen, he could have joined without the parents' consent. I was in the Williams' home practically every day in the week, and Benson came in my home; we were constantly back and forth. The day he brought home the papers, the parents talked with him about joining, they didn't want him to join. He begged to be permitted to join, and finally they said they would consent, after looking over the papers. Well, I was in the home. That evening, there was present Mr. Williams, Mrs. Williams, Benson, and myself, just the family and myself. There were a number of papers there—it was sixteen years ago and some impressions are not just clear. I do recall very distinctly one of the documents was that Benson joined the navy to stay there until he reached his twenty-first birthday. The recruiting officer told him it was necessary for him to have the consent of his parents and it would be necessary for him to apply for and have war risk insurance. We left the Williams house and we

18 went down to a notary public, I recall it was in the seventy-five hundred block on Eggleston; at that time they were living at 7623, south side of Chicago. Mr. Brown read the paper over, or maybe twice he read the papers over, and I recall making the statement I was only sixteen and was not particularly interested in it.

Mr. DOYLE. Do you recall him making any statements, Mr. Johns?

A. He said, "Well, Benson, you will have to take out insurance with this thing, that will cut down your pay, Benson", which fact would probably affect him, of course.

Q. It was the understanding of what was concerned, that the boy must take out insurance and must sign consent.

A. Yes, that was in one document, I do recall that the consent signed by the two Williams, both mother and father, provided that the boy was to be enlisted for the period of minority and in addition, he had to take out war risk insurance, payable to one of the parents, and he made it payable to his mother. I recall the enlistment of Benson Williams as we were still in a state of war, and he joined the navy under certain conditions, that was before the Armistice and we were technically still in a state of war with Germany. It was my understanding at the time. I recall Mr. Williams asking the question with reference to the insurance, as they had an investment in the boy and the boy ought to be insured. The boy accepted the document calling for that insurance, he was required to take out insurance in connection with his enlistment. If it was actually required, I don't know.

Q. How many pages in that paper?

A. I don't recall if more than one page or not, Mr. Doyle.

Q. You have the recollection it provided that ten thousand dollars insurance would be carried during enlistment?

A. Yes.

Q. It was on the document?

A. Yes.

Q. Which bore their signature?

A. Yes; as near as I can remember.

CROSS-EXAMINATION

The provision for the ten thousand dollars insurance was on the printed form; doesn't remember whether the provision, however, was printed or written across the form; didn't see it at the recruiting office; didn't see it at any office of the government; didn't know
19 where it came from at all; doesn't know whether it was sent to any government office at all except that Benson told him that he took it to the recruiting office.

Mr. SULLIVAN. May I ask first a question. I understood—correct me if I am wrong—a few moments ago, on direct examination, it was my understanding that you knew what was on that paper was what the notary public said, "Benson, you will have to keep ten thousand dollars insurance." Did you actually read it yourself on the papers?

A. On three occasions that question arose. In the first place, it was when Benson spoke to me before he showed the papers to his parents, and told me—at that time, I did not look at the papers—he told me that he had to take out ten thousand dollars insurance as part of the enlistment in order to get his parents' consent, that he had to enlist until he was twenty-one, and he had to agree that he would not buy out of the service during the period of his enlistment.

The second time was in the kitchen and later in the dining room, and the papers were looked over. Mr. Williams looked at them before we went to the notary public, and at that time discussed that. I can't recall all of it, but the papers were read by all of us. It was sixteen years ago. But I do recall that at that time he discussed the question, it was discussed, and I was there when it was discussed.

And the third time was at the notary public's office. It was reiterated three times.

Didn't read it at the notary public's office; has a distinct recollection of reading parts of the papers in the Williams' kitchen; has a distinct recollection of reading something about war risk insurance; can't remember exactly what it said.

ROLAND E. WILLIAMS, called as a witness on behalf of the plaintiff, having first been duly sworn, testified as follows, to wit:

Roland E. Williams lives at 7414 Emerald Avenue, Chicago; is a husband of the plaintiff; after being notified of the death of Benson Williams, went to the Veterans' Bureau at State and Van Buren Streets on the eighth floor; was given a blank form to fill out to file for insurance; that was in the latter part of July 1921. Plaintiff's Exhibit One is a copy of the letter mailed to him from the Veteran's Bureau at Van Buren and State acknowledging receipt of the filed claim. Plaintiff's Exhibit Two is a letter from the Honorable Senator James Hamilton Lewis.

Plaintiff's Exhibit Three came to him and his wife through the mails. Plaintiff's Exhibit Four came to him and his wife through the mails. Plaintiff's Exhibit Five came to him and his wife through the mails. Plaintiff's Exhibit Six comes from the files of the United States Veterans' Bureau.

After filing this claim wrote to Congressman Elliott W. Scroll. Kept continually trying to get information regarding the claim; finally got a ruling November 1932; wrote the auditor of the navy regarding money that might have been due the veteran at the time of his death; the auditor sent forms to be filled out which he and Mrs. Williams filled out and sent back to Washington; about eighty dollars was sent to Mr. Williams; this claim was paid up to April 12, 1921; this eighty dollars covered the period of pay from the time the boat disappeared until April 12, 1921.

Benson Williams was 17 at the time of enlistment. Witness and plaintiff executed a consent at the time of the veteran's enlistment; does not have a copy of the release or consent; there was some written matter on that consent at the time of his enlistment other than the printed matter.

Q. Was there anything written in that consent or waiver at the time of his enlistment other than what was printed on there?

A. There was.

Q. Tell the Court what that was.

Mr. SULLIVAN. I object to that, your Honor. I don't know by whom it was written, and if it was written by either Mr. Williams,

or by a recruiting sergeant, he was utterly without authority to do so, and the United States can not be bound by his unlawful act unless he shows some authority to bind us by that.

Mr. WADE. I think that will be a legal question, and I would like the record to show that was done. They may have some grounds and contrary to the regulations, and might not be bound by it, but I think it should be shown.

The COURT. I think I will permit it without ruling on it.

Mr. SULLIVAN. Exception.

(To which ruling of the Court, the defendant, by counsel, then and there duly excepted.)

21 The substance of the written matter on the consent form was that ten thousand dollars of war risk insurance was to be carried during the period of enlistment, naming Angie C. Williams as beneficiary; doesn't know who wrote that in there; it was typewritten; it was written on there at the time the consent was signed. First received information that the insured cancelled his insurance from B. Frazier at the time the claim was filed. The typewritten clause regarding the insurance was put in the consent because the plaintiff and he refused to sign it unless it carried the clause. After finding out that there was a cancellation, claim was filed immediately. That was the first he knew of the cancellation. At the time this consent was signed the plaintiff's son, Benson, and Roy Johns and himself were present.

Cross-Examination

At the time the consent was signed the typewritten provision was already written across the face of the consent. His sone, Benson, was the person who submitted this consent document for his signature; his son Benson, the veteran, brought it home to him; then they went over to a notary public and had it notarized, and after it was signed and notarized it was turned over to the veteran; then the parents went home. Shortly after, a day or so, the son left to go into the navy, and when he left he took the paper with him, and that was the last ever seen of that paper; doesn't know whether his son turned that paper in to the navy authorities or not; but he knows he did enlist; doesn't know whether the son filed that paper with the authorities or not; didn't see him do it.

Redirect Examination

Never signed any other consent or waiver except this one with the clause "providing for insurance."

In open Court Plaintiff requested defendant to produce the original consent signed by parents to enlistment of insured and defendant's counsel states such has been made in the records of Navy Department and that said consent cannot be found nor can the form used by found.

22 ANGIE CROOK WILLIAMS, the plaintiff, called as a witness on her own behalf, being first duly sworn, testified as follows:

Angie Crook Williams is the plaintiff; lives at 7414 Emerald Avenue, Chicago; is a mother of the insured; beneficiary under his policy; the insured was born August 27, 1901; recalls the time of his enlistment in the United States navy; signed papers, signed enlistment papers with an insurance clause; never at any time consented to the cancellation of the insurance; there was a time when the government claimed there was a cancellation; notified the government that they had never consented to any cancellation; had been working constantly ever since to get the insurance paid; at the time the consent for enlistment was signed with the typewritten clause on it, Mr. Williams, Roy Johns, Benson, and herself were present. That was before the enlistment. There were no other papers or consents signed.

And thereupon there was offered and received in evidence Plaintiff's Exhibit Number One, to which action of the Court in admitting into the evidence the said documents the defendant then and there objected and duly excepted.

Plaintiff's Exhibit One is summarized in words and figures as follows, to wit:

Plaintiff's Exhibit 1

Referred to Mrs. Williams with the Request That Form 527 Be Sent to This Office.

E. V. DICKSON.
AUG. 27, 1921.

C–707739 Benson C. Williams, G. M. 3/c U. S. N. JFO'H-ec-12-d

Mr. E. V. DICKSON,
8th Floor, Leiter Bldg.,
Chicago, Illinois.

DEAR MR. DICKSON: This office acknowledges receipt of your communication of August 4, 1921, submitting executed forms in support of the insurance claim of Mr. Benson C. Williams, formerly G. M. 3/c U. S. Navy who died June 30, 1921.

23 You are informed that under date of August 4, 1921, a communication was forwarded to Mrs. Angie Williams, the mother of the deceased sailor informing her that insurance formerly held by her son lapsed on August 2, 1920, on account of his failure to pay premiums. On the second enlistment the deceased sailor did not reestablish his insurance. Therefore, it was not in force at the time of his death.

Our form #527 application for compensation on account of dependency was forwarded to the mother of the decedent requesting her to submit proof of dependency if she so desires. This award will amount to $20 per month effective as of July 1, 1921, provided the necessary proof of dependency is established.

All future correspondence should bear the soldier's full name, rank, and organization, as well as our file number C–707739.

Assistant Director.

And thereupon there was offered and received in evidence Plaintiff's Exhibit Two.

Respectfully,

LEON FRASER,

Plaintiff's Exhibit Two is summarized in words and figures as follows, to wit:

Plaintiff's Exhibit Two

VETERANS ADMINISTRATION,
Washington, May 20, 1932.

In reply Refer To: FDB. Your File Reference: Williams, Benson C. XC–707 739.

Honorable J. HAMILTON LEWIS,
United States Senate,
Washington, D. C.

MY DEAR SENATOR LEWIS: This is in reply to your letter of May 13, 1932, relative to the claim for benefits under the Yearly Renewable Term Insurance of Benson C. Williams, now deceased.

No letter of disagreement can be issued until the claim has been thoroughly reviewed by the insurance Claims Council, and before submitting the claim to the Council a request is being forwarded to the Navy Department with a view to clarifying the seeming conflict between the information furnished your office and the records of this Administration.

24 As soon as a response is received from the Navy Department you will be further advised.

A copy of this communication is enclosed for your use.

Respectfully,

Harold W. Breining,
(Signed) HAROLD W. BREINING,
Assistant Administrator.

Encl.

And thereupon there was offered and received on behalf of the plaintiff, Plaintiff's Exhibit 3, which is substantially as follows: to wit–:

Plaintiff's Exhibit 3

TREASURY DEPARTMENT,
BUREAU OF WAR RISK INSURANCE,
Washington, October 25, 1921.

In reply refer to: C–707739 Benson Charles Williams, U. S. N. JTD/sm–12.

Honorable ELLIOTT W. SPROUL,
House of Representatives,
Washington, D. C.

DEAR MR. SPROUL: Replying to your favor of October 20, 1931, making inquiry regarding the above captioned deceased seaman, you

are advised that the records of the Bureau show that Mr. Williams was declared dead since June 30, 1921, and that there was no Government Insurance in force at the time of his death.

The decedent held Government Insurance policy in the amount of $10,000.00 on his first enlistment. The records show his first discharge to be July 21, 1920, but his policy lapsed on October 2, 1920 on account of his failure to pay premiums. On his second enlistment the deceased sailor did not re-establish insurance and, therefore, same was not in force at the time of his death. For this reason, the mother who was designated as beneficiary in the policy will not be entitled to payments from the Bureau, but I shall be pleased to give further consideration to any claim she may make for compensation, provided she was dependent in whole or in part upon her son for support.

On August 27th, the proper forms were dispatched to be executed and returned to the Bureau by the parents, but to date same have not been received. As soon as this evidence is furnished, as stated above, I shall be pleased to give further consideration to this claim.

All future correspondence relative to this case should bear the file No. C-707739.

Very truly yours,

(Signed) C. R. FORBES,
Director, United States Veterans' Bureau.

Enc. (2).

To the receipt in evidence of which the defendant by its counsel then and there duly objected and excepted.

And thereupon there was offered and received on behalf of the plaintiff, Plaintiff's Exhibit 4, which is substantially as follows, to-wit:

Plaintiff's Exhibit 4

VETERANS ADMINISTRATION,
Washington, April 21, 1932.

In reply refer to: FDB Your file Reference: Williams, Benson C. XC-707 739.

Honorable J. HAMILTON LEWIS,
United States Senate,
Washington, D. C.

MY DEAR SENATOR LEWIS: Receipt is acknowledged of your communication of April 1, 1932, relative to the claim for insurance benefits in the case of the above named veteran.

The records of this office indicate that the veteran applied for $10,000 insurance which was cancelled by his request July 21, 1920, thereby causing the insurance to lapse for nonpayment of the premium due October 1, 1920.

The Navy Department is being requested to furnish a complete checkage of the insurance to determine the status of the insurance at the time of the veteran's death.

It further appears that at the time the veteran died, he was serving in his first enlistment.

A copy of this communication is enclosed for your use.

Respectfully,

(Signed) HAROLD W. BREINING,
Assistant Administrator.

Encl. 1.

To the receipt in evidence of which the defendant by its counsel then and there duly objected and excepted.

26 And thereupon there was offered and received on behalf of the plaintiff, Plaintiff's Exhibit 5, which is substantially as follows to-wit:

Plaintiff's Exhibit 5

VETERANS ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS,
Washington, November 5, 1932.

Williams, Benson C. XC-707 739.
Mrs. ANGIE C. WILLIAMS,
7453 Stewart Avenue,
Chicago, Illinois.

DEAR MADAM: Please be advised that your claim for insurance has been denied since the evidence on file shows that the service man requested a cancellation of his insurance on July 20, 1920, and no premium was deducted subsequent to this request, so there was no insurance in force at the time of his death on June 30, 1921.

You may consider such denial final for the purposes of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended.

Respectfully,

(Signed) FRANK T. HINES,
Administrator.

To the receipt in evidence of which the defendant by its counsel then and there duly objected and excepted.

And thereupon there was offered and received on behalf of the plaintiff, Plaintiff's Exhibit 6, which is summarized in the words and figures as follows:

Plaintiff's Exhibit 6

Treasury Department Form 514.

Affidavit in Support of Insurance Claim

I, Angie Crook Williams, residing at 7623 Eggleston Ave., Chicago, Illinois, believe myself to be entitled to receive the monthly payments of insurance granted by the United States to Benson Charles Williams, who died on the 30th day of June 1921.

27 I do solemnly swear that the foregoing statements are true to the best of my knowledge and belief.

(Signed) ANGIE CROOK WILLIAMS.

Subscribed and sworn to August 3, 1921.

To the receipt in evidence of which the defendant by its counsel then and there duly objected and excepted.

And thereupon the plaintiff rested her case in chief.

Motion to strike

And thereupon at the conclusion of the case offered for and on behalf of the plaintiff, the defendant, by its counsel, moved the Court to strike out all testimony in regard to the typewritten words superimposed on the form of the navy department used at the time of the enlistment of the veteran to gain the consent of the parents of a minor enlisting in the navy, on the grounds that there was no showing that it was put there by anyone connected with the navy department, no showing that it was a provision used by the navy department at that time; no showing that such a provision or agreement was authorized by an act of Congress, or any valid regulations of the navy department which motion was denied by the Court, to which action of the court in denying said motion, the defendant then and there duly excepted. Thereupon the defendant moved the court to make the following findings of fact and conclusions at law:

Defendant's requested findings and conclusions

1. That no claims of insurance benefits was filed by the beneficiary before July 3, 1931.

2. That before the death of Benson Charles Williams, the policy holder, and, on July 20, 1920, the said Benson Charles Williams requested the navy department to reduce his contract of war risk insurance in the sum of ten thousand dollars, which was in force up to that date, to none, which in law would amount to a cancellation.

3. That there were no valid and lawful provision compelling the carrying of war risk insurance by the United States for the benefit of Benson Charles Williams; that the government would not be obligated to keep a contract of ten thousand dollars war risk insurance in force during the period of his minority, or during the period of enlistment of Benson Charles Williams.

4. That such an agreement or such a provision, if such existed would not be binding upon the United States Government.

5. Asked the Court to find that it is without jurisdiction to
28 hear the cause, because no contract of insurance was in force and because under the provisions of section 445 of Title 38, United States Code, the Court is without jurisdiction because suit was filed too late.

6. Asked the Court to find that if a claim was filed on or about August 21, that thereafter on October 25, 1921, C. R. Forbes, Director of the United States Veterans Bureau, denied that claim as shown by Plaintiff's Exhibit Number Three, and that therefore the Court is without jurisdiction under section 19 of the World War Veterans Act, because suit was filed more than six years after the accrual of the cause of action, upon which the suit was based.

Whereupon the Court denied the request of the defendant, to which action of the Court in denying the said motion and request of the defendant, the defendant then and there duly excepted.

And thereupon the defendant to maintain the issues on its part, offered the following evidence, to wit:

And thereupon there was offered and received Government's Exhibit Number One, which is summarized in the words and figures as follows, to wit:

Government Exhibit 1

This continuance of insurance premium "I hereby request that my insurance be reduced from ten thousand dollars to none dollars", signed Benson Charles Williams. Witness to signature T. D. Southworth Lieutenant U. S. Sub. Chaser Number 305, dated July 20, 1920. From disbursing officer; to Bureau of War Risk Insurance (Insurance Division), Treasury Department, Washington, D. C. Subject: Discontinuance of Insurance Premium. You are hereby notified that the term insurance premium of the below-named man has been discontinued on my pay roll. Date of last checkage of premium July, 1920. Cause of discontinuance, request of applicant. Signed, Joseph A. Cossairt, Acting Pay Clerk, United States Navy.

And thereupon there was offered and received in evidence Government Exhibit Number Three, certified and authenticated under the hand and seal of the Secretary of the Navy, which said Government Exhibit Three is summarized in the words and figures as follows, to wit:

Government Exhibit 3

The records of the Bureau show that Benson Charles Williams enlisted in the United States Navy January 13, 1919, at the
29 navy recruiting station, Chicago, Illinois, as apprentice seaman to serve during minority until August 26, 1922; stated that he was born at Columbus, Ohio, August 27, 1901. Named his mother, Angie Crook Williams, 7623 Eggleston Avenue as next of kin at date of enlistment; was transferred to the navy training station, Great Lake, Illinois, January 13, 1919; to the naval training camp, Mare Island, California, April 7, 1919; to the Receiving Ship at Mare Island, California, June 30, 1919; to the U. S. S. C. #305, July 17, 1919; was rated seaman second class, July 17, 1919; seaman, January 15, 1920; gunner's mate third class, June 1, 1920; transferred to the U. S. S. "Conestoga", January 13, 1921; and died June

30, 1921, as gunner's mate third class. At the time of death, Williams was a member of the crew in the ill-fated U. S. S. "Conestoga" which sailed from Mare Island, California, March 25, 1921, enroute to Samoa, via Pearl Harbor, Territory of Hawaii.

Form N. Nav. 235, executed by Williams at the Navy Mobilization Station, Chicago, Illinois, January 13, 1919, shows record of insurance in the amount of $10,000.00, in favor of Angie Crook Williams, mother, 7623 Eggleston Avenue, Chicago, Illinois.

Consent, declaration, and oath of parent to enlistment in the Navy is not on file.

And thereupon there was offered and received in evidence Government's Exhibit Two, which is summarized in the words and figures as follows, to wit:

Government Exhibit 2

The United States Veterans' Bureau on Form 579. Claim For Insurance—Permanent Total Disability. I, Roland D. Williams, believe myself to be entitled to receive the monthly payments of insurance granted by the United States to me under certificate or policy number ---------, on account of permanent total disability resulting from Lost At Sea. Date disability began, June 30, 1921. Signed by Roland D. Williams, Claimant, father of the deceased. Subscribed and sworn to by him on the first day of July 1931 before L. R. Benston, Notary Public; received and filed in the United States Veterans' Bureau on July 3, 1931, and thereupon there was received in evidence Government's Exhibit Three-A, which is summarized in the words and figures as follows, to wit:

30 *Government Exhibit 3–A*

NOVEMBER 5, 1932.

To MRS. ANGIE C. WILLIAMS,
7453 Stewart Avenue, Chicago, Illinois.

DEAR MADAM: Please be advised that your claim for insurance has been denied since the evidence on file shows that the service man requested a cancellation of insurance on July 20, 1920, and no premium was deducted subsequent to this request, so there was no insurance in force at the time of his death on June 30, 1921.

You may consider such denial final for the purposes of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended.

Respectfully,

(Signed) FRANK T. HINES,
Administrator.

Stamped, signed, and mailed November 5, 1932, Administrator's office.

And thereupon the defendant rested its case.

The defendant requested the Court to make findings of fact and conclusions of law as follows, and moved the Court to enter judgment for the defendant:

[Title omitted.]

Request of the defendant for findings of fact and conclusions of law

Now comes the defendant, The United States of America, by Michael L. Igoe, its attorney for the Northern District of Illinois, at the conclusion of all the evidence and before the entry of final
31 judgment herein, and moves the court to enter judgment in favor of the defendant and moves the court to make the following findings of fact and conclusions of law:

I

That Benson Charles Williams, the insured and the holder of the War Risk Insurance policy herein sued upon, was born August 27, 1901; that he enlisted in the United States Navy on January 13, 1919, and that the said Benson Charles Williams served continuously thereafter in the United States Navy up to and including March 25, 1921, when he, as a member of the crew of the U. S. S. "Conastoga", left San Francisco, California for Pearl Harbor, Hawaii, and that since that date the said ship, crew, and officers have been unheard of; that on July 22, 1921, the United States Navy Department declared that all officers and members of the crew, of the U. S. S. "Conastoga", including the insured, Benson Charles Williams, were officially declared dead as of June 30, 1921.

II

That on January 13, 1919, the veteran, Benson Charles Williams, applied for, and there was issued to him, a contract of War Risk Term Insurance in the principal sum of $10,000.00; that Angie Crook Williams, the plaintiff herein, was designated beneficiary under the said insurance contract, and that the said Angie Crook Williams is the mother of the insured and within the claim of beneficiary permit by the statutes of the United States.

III

That the premiums on the said contract of insurance were paid as they became due by deduction from the pay of the insured the amount of the premiums; that such deductions were made from January 13, 1919, up to and including the premium due for the month of July 1920; that no deductions were made from the pay of the insured after the month of July 1920, nor were any payments made in fact or in law on the said contract of insurance to keep it in force, and that the said contract of insurance both in fact and in law lapsed for nonpayment of premiums on August 1, 1920, plus the grace period of 31 days thereafter.

32

IV

That on July 20, 1920, the insured, Benson Charles Williams, signed and delivered to the Naval authorities of the United States, a document reading as follows:

"I hereby request that my insurance be reduced from $10,000.00 to none dollars."

V

That at the time of the death of the insured, Benson Charles Williams, the contract of War Risk Insurance sued upon was not in full but had lapsed prior thereto.

VI

That the records of the Naval Department of the Veterans' Administration do not disclose any Consent of Parents to the Enlistment of a Minor, and that no agreement was entered into by the insured and any officer or agent of the defendant to keep the said contract of insurance in force during the period of the enlistment, and that no such contract or agreement was entered into by any agent or officer of the defendant and the parents of the insured or either of them.

VII

That if any such contract or agreement was entered into, as aforesaid, as a matter of law it has no binding force or effect upon the defendant, the United States of America.

VIII

That Benson Charles Williams did not become totally and permanently disabled at a time when the said contract of insurance was in full force and effect.

IX

That the insured, said Benson Charles Williams, did not die at a time when the said contract of insurance was in full force and effect.

33

X

That on July 3, 1931, Angie Crook Williams, the plaintiff, filed her claim for insurance benefits under the said policy of insurance, which said claim alleged total and permanent disability at a time when the insurance contract was in force.

XI

That the said claim was denied by the Administrator of Veterans' Affairs of the United States Veterans' Administration on November 5, 1932.

XII

That a letter notifying the plaintiff, Angie Crook Williams, of the said denial was mailed to her last address of record at Chicago, Illinois, on November 5, 1932, from Washington, D. C.

XIII

That this lawsuit was filed November 9, 1932.

XIV

That we ask the court to find it is without jurisdiction to hear this cause or to enter judgment.

XV

That we ask the court to find that this suit is barred by the Statute of Limitations as set forth in Section 445 of Title 38, U. S. C. A., as amended.

Respectfully submitted.

MICHAEL L. IGOE,
United States Attorney.
EDMOND SULLIVAN,
Assistant U. S. Attorney.

This cause coming on to be heard on motion of the defendant, The United States of America, by Michael L. Igoe, its attorney
34 for the Northern District of Illinois, that the court enter judgment in favor of the defendant and the court make the above findings of fact and conclusions of law, the court denies and overrules the motion of the United States of America on its motion for judgment and findings of fact and conclusions of law and enters judgment for the plaintiff, Angie Crook Williams.

To such rulings and actions of the court, the defendant objects and takes an exception, which objection and exception is hereby allowed.

Enter:

PHILIP L. SULLIVAN,
United States District Court Judge for the Northern District of Illinois, Eastern Division.

And thereupon, at the close of all the evidence, the plaintiff requested the Court to make findings of fact and conclusions of law, and to enter a judgment in his favor, which request was granted by the Court, to which action of the Court in making findings of fact and conclusions of law and entering judgment for the plaintiff the defendant then and there duly excepted, which was all that occurred at the said trial.

Order settling bill of exceptions

This is to certify that the foregoing bill of exceptions tendered by the defendant is correct in every particular and is hereby settled,

signed, and sealed in open court and made a part of the record in this cause this 11 day of March 1936.

This is to certify that from time to time the term of court was properly extended herein for the purposes of settling, signing, and filing the foregoing bill of exceptions.

Philip L. Sullivan,
PHILIP L. SULLIVAN,
District Judge.

No objection.
FRANK O. WADE,
WM. J. DOYLE,
Attorneys for Plaintiff.

[File endorsement omitted.]

35 In United States District Court

Petition for appeal

Filed Oct. 16, 1935

To Honorable PHILIP L. SULLIVAN, *Judge of the United States District Court for the Northern District of Illinois, Eastern Division:*

The United States of America, your petitioner, is the defendant in the above entitled cause and prays that it may be permitted to take an appeal from the final judgment entered herein on the 11th day of October A. D. 1935, to the United States Circuit Court of Appeals in and for the Seventh Judicial Circuit, for the reasons specified in the Assignment of Errors filed herewith.

Your petitioner further prays that this appeal be allowed and that a transcript of the records, proceedings, and papers upon which such final judgment was premised, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh Judicial Circuit so that the errors may be corrected and substantial justice done to the parties.

MICHAEL L. IGOE,
United States Attorney.
EDMOND SULLIVAN,
Assistant U. S. Attorney.

Notice waived.

WM J. DOYLE.

Dated: Chicago, Illinois, October 11, A. D. 1935.

36 In United States District Court

Assignment of errors

Filed Oct. 16, 1935

Now comes the defendant, The United States of America, by Michael L. Igoe, its attorney for the Northern District of Illinois,

and in connection with its petition for appeal in the above entitled cause says that in the record and the proceedings and the final judgment manifest error has intervened to the prejudice of the defendant as follows:

1

The court erred in finding as a matter of fact that the policy of War Risk insurance was in full force and effect on June 30, 1921.

2

The court erred in finding as a matter of law that the contract sued upon was in full force and effect on June 30, 1921.

3

The court erred in sustaining as a matter of law the validity of the alleged agreement between the recruiting officer and Angie Crook Williams to keep the policy of War Risk insurance in full force and effect during the period of enlistment of Benson Charles Williams, the insured.

4

The court erred in determining as a matter of law that the court had jurisdiction to hear this cause and to enter judgment against the United States of America.

5

The court erred as a matter of law in holding that this case was not barred by the limitation on suit provided for in Section 445 of Title 38, U. S. C. A., as amended.

37

6

The court erred in not finding as a matter of fact that Benson Charles Williams had cancelled his contract of War Risk insurance on July 20, 1920, and that from that date forward there was no contract of War Risk insurance in force.

7

The court erred in not finding that the policy lapsed for nonpayment of premiums on August 1, 1920, plus the grace period of 31 days thereafter.

8

The court erred in not finding as a matter of law that this suit was barred by the limitations as set forth in Section 445 of Title 38, U. S. C. A., as amended.

9

The findings of the court are contrary to the law and to the evidence.

10

The court erred in entering judgment for the plaintiff.

By Reason Whereof, the defendant prays that the judgment may be reversed, and substantial justice done to the parties.

MICHAEL L. IGOE,
United States Attorney.
EDMOND, SULLIVAN,
Assistant U. S. Attorney.
FREDERIC H. MAUGHMER,
Attorney, Department of Justice.

Notice waived.

WM. J. DOYLE.

OCTOBER 11, 1935.

38 In United States District Court

Order allowing appeal

Entered Oct. 16, 1935

This cause coming on to be heard upon the petition of The United States of America, defendant herein, for an appeal from the final judgment entered in favor of the plaintiff; and it appearing to the court that good cause is shown for an appeal to be taken; now therefore,

It Is Hereby Ordered, Adjudged And Decreed that an appeal be, and the same is, hereby allowed to The United States of America in the above entitled cause.

Enter:

PHILIP L. SULLIVAN,
Judge of the United States District Court
for the Northern District of Illinois.

Dated: Chicago, Illinois, October 11, A. D. 1935.

Notice waived.

WM. J. DOYLE.

In United States District Court

Order extending time

Entered Jan. 7, 1936

On motion of attorney for defendant, United States of America,

It Is Ordered that the time within which to settle, sign, and file Bill of Exceptions herein be and the same is hereby extended to March 3, 1936.

It Is Further Ordered that the time for filing and docketing record in the United States Circuit Court of Appeals be and the same is hereby extended to March 14, A. D. 1936.

39 In United States District Court

Entered March 3, 1936

Order Extending Time

On Motion of United States Attorney
It Is Ordered that the time within which to settle and file Bill of Exceptions be and the same is hereby extended to March 11, 1936.

In United States District Court

Stipulation as to record for appeal

Filed Feb. 14, 1936

It is stipulated by and between the parties to this cause by their respective counsel whose signatures are hereto below affixed that the following record may be prepared by the Clerk of the United States District Court for use in connection with the appeal heretofore allowed and sent to the Clerk of the United States Circuit Court of Appeals.

1. Copy of the Petition filed November 9, 1932.
2. Copy of Answer filed April 5, 1935.
3. Copy of reply filed by the plaintiff.
4. Copy of Judgment entered October 11, 1935, and findings of fact.
5. Copy of petition for appeal October 16, 1935.

40 6. Copy of Citation on Appeal.
7. Copy of assignment of errors.
8. Copy of Order allowing appeal.
8A. A copy of the Bill of Exceptions.
9. A copy of this Stipulation.

(Signed) W. J. DOYLE,
Attorney for Plaintiff.
M. L. IGOE,
Attorney for Defendant.
(EMS)

[Clerk's Certificate to foregoing transcript omitted in printing.]

41 [Citation in usual form showing service on Wm. J. Doyle, filed Oct. 16, 1935, omitted in printing.]

43 [Clerk's Certificate to foregoing transcript omitted in printing.]

44 [Caption omitted.]

45 In United States Circuit Court of Appeals for the Seventh Circuit

UNITED STATES OF AMERICA, APPELLANT

vs.

ANGIE CROOK WILLIAMS, APPELLEE

Motion to dismiss appeal

Filed April 4, 1936

Comes now the appellee in the above entitled cause, by his counsel of record, and moves that the appeal herein be dismissed, for the following reasons:

1. Section 1 of rule 13 of Rules of the United States Circuit Court of Appeals for the Seventh Circuit, requires appellant to file praecipe for transcript of the record within fifteen days after the allowance of the appeal.

The transcript shows the appeal was granted October 11, 1935 and that praecipe was not filed until February 14, 1936 (tr. P. 39), which was too late and is void.

2. Section 3 of rule 13 of Rules of the United States Circuit Court of Appeals for the Seventh Circuit, requires said transcript to be filed before the return day named in the citation, which date the transcript shows (p. 41) was within 25 days from October 14, 1935.

The transcript was filed March 13, 1936, many days after the expiration of the time allowed for the filing of the same by the rules of this court and order of said trial court.

3. The pretended extension of time by court order January 7, 1936 (tr. p. 38), was not made within the term of court in which said judgment was rendered nor within the extended time thereof.

4. The pretended extension of time by court order March 3, 1936 (tr. p. 39), was not made within the term of court in which said judgment was rendered nor within the extended time thereof.

46 5. Said appeal was granted October 14, 1935 in the October 1935 term of said court and the praecipe was not filed and the bill of exceptions was not settled and filed until long after the expiration of said October 1935 term, and said court order was therefore too late, and this court is without jurisdiction in said cause.

Wherefore, appellee prays that said appeal granted on the 11th day of October, 1935, be dismissed for want of jurisdiction.

Respectfully submitted.

FRANK O. WADE,
W. J. DOYLE,
Attorneys for Appellee.

[File endorsement omitted.]

47 In United States Circuit Court of Appeals

[Title omitted.]

Order extending time, etc

April 24, 1936

On motion of counsel for appellee, It is ordered that the time to file brief for appellee in this cause be, and the same is hereby, extended ten days from April 26th.

It is further ordered that the motion of appellee to dismiss this appeal be continued to the hearing on the merits of this cause.

On application of counsel for appellant, It is ordered that the transcript of the record herein be returned to the District Court of the United States for the Northern District if Illinois, Eastern Division, for such amendment as said court may deem proper.

Recital as to refiling of record

And afterwards, to-wit: On the twenty-fifth day of April, 1936, the transcript of record was refiled in the office of the Clerk of this court.

48 In United States Circuit Court of Appeals

[Title omitted.]

Minute entry

November 30, 1936

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Thomas E. Walsh, counsel for appellant, and by Mr. Frank O. Wade, counsel for appellee, and the court having heard the same takes this matter under advisement.

49 In United States Circuit Court of Appeals for the Seventh Circuit

No. 5812. October Term and Session, 1936

THE UNITED STATES OF AMERICA, APPELLANT

vs.

ANGIE CROOK WILLIAMS, APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Before EVANS, Circuit Judge, and LINDLEY and BALTZELL, District Judges

Opinion

December 9, 1936

LINDLEY, District Judge: The United States appeals from a judgment awarding war risk insurance benefits to the beneficiary in a contract of a deceased member of the Navy.

Benson Charles Williams, aged seventeen years, enlisted in the naval service January 13, 1919. On the same day he applied for and obtained a contract of war risk insurance in the principal sum of $10,000, in which appellee, his mother, was named as beneficiary. There was substantial evidence to sustain the finding of the District Court that at the time of his entry into the navy there was written across the consent of the young man's parents to his enlistment, a clause providing that such consent was given upon condition that he obtain and carry a $10,000 contract for war risk insurance in which his mother should be named as beneficiary. This consent, the court found, was executed by both parents in order to comply with the statute which provides that minors between the age of 14 and 18 shall not be enlisted for naval service without the consent of the parents or guardian. Sec. 161, title 34, U. S. C. A.

50 The premiums upon the insurance were paid by deductions from the salary or wages of the insured up to and including July 1920. Thereafter no deductions were made, for on that date the insured requested cancellation of the policy. Early in the year of 1921, he sailed as a member of the crew of the U. S. S. "Conastoga" from San Francisco, California, for the southern Pacific. The ship, its officers, and the crew have not been heard from since. As a result, the insured was declared deceased, by the Navy Department, as of June 30, 1921.

Appellant contends that because of the minor's attempted cancellation of the policy some months prior to his death, there is no liability.

The insured died before reaching majority, and the direct question involved, therefore, is as to the effect of a minor's attempted cancellation of his insurance contract, under the specific facts involved. The government was charged with notice of his age and, by the terms of the instrument signed by his parents, of the fact that their consent to his enlistment was conditioned upon the issuance and maintenance of the insurance. In the face of notice of these facts, the government approved the minor's cancellation.

Under the law quite generally, a minor is without capacity to contract or take other legal action except for necessaries. His contracts are voidable, at the option of himself or parents. He himself may ratify any such voidable act upon reaching his majority, or he or his authorized representative or person in loco parentis may assert the voidability. Reliance upon the cancellation is in the nature of an assertion of estoppel against the beneficiary because of the action of the minor during his minority, but this is "but a claim that he has assented or contracted. But he can no more do that effectively than he can make the contract alleged to be confirmed." Myers v. Hurley Motor Co., Inc., 275 U. S. 21. Assertion of estoppel by cancellation must in the very nature of things be the assertion of legal competency to perfrom legal acts such as the making of contracts; such acts may not be asserted against the minor to his prejudice. Mutual Life Insurance v. Schiavon, 71 F. (2d) 980 (C. C. A. 8).

The facts bring the question very closely to precedents where one party, having an insurable interest, obtains insurance upon another's life. Having an insurable interest and a property right in the resulting contract, such a party is protected against cancellation
51 attempted by the insured, without notice to him. So, here, the mother gave the required consent to the services of her son in behalf of the government upon the express condition that the insurance, payable to her, be maintained. Consequently, the son and the government could not, by arrangement wholly between themselves, without notice to her, set at naught the specified condition. The government could not avail itself of the minor's services, to which it was entitled only if she so agreed, and at the same time ignore the condition upon which agreement was obtained.

It follows, therefore, that the attempted cancellation of the minor was ineffective; that it was never ratified by himself after majority or by the beneficiary; that the government is charged with notice of his minority, the condition upon which his enlistment was accepted and the specified interest of his mother as beneficiary, expressly reserved in the consent to enlistment, and could not rightfully act upon the cancellation without notice to the beneficiary, but was bound, in the absence of such notice, to collect the premiums and maintain the policy by deductions from the insured's salary, as previously, and that, therefore, the insurance being in full force and effect at the time of the deceased's death, the beneficiary is entitled to recover.

It is said by appellant, however, that there is no evidence of wages due the insured from which the premiums could be deducted. Such

assertion, it seems to us, is unsound. The insured remained in the service at all times during his life time after his enlistment. He became gunner's third mate. There was accrued salary due him at the time of his death, and it may not be asserted by the government in the face of these facts that there was no proof that he was earning nothing. It is at least a rebuttable presumption that his pay continued upon the same terms as previously and in the absence of evidence rebutting such presumption, it must control.

It is said by appellant that the court is without jurisdiction, as the claim was not filed within the period required by statute. But the evidence discloses that appellee filed her claim originally in August 1921, and that the final order denying same was issued by the administrator on November 5, 1932. True it is, that previously, in 1921, the director indicated that he was relying upon the cancellation, but we do not believe that his letter to this effect can be treated as final denial of the claim, for he said, "I shall be pleased to
52 give further consideration to this claim." Presumably he was referring to the insurance claim. In the same letter he invited further correspondence relative to the claim. Thereafter at various times letters were written to Senator Lewis and Congressman Sproul with regard to the status of the case and finally, on November 5, 1932, the administrator denied the claim, adding "you may consider such denial final for the purpose of instituting suit under section 19 of the World War Veterans' Act." Thus, we take it that the claim was pending before the director from 1921 until its denial in 1932 and that under the statute, the action was brought within the period allowed by Section 445 of Title 38, U. S. C. A., as amended.

Accordingly the judgment of the District Court is Affirmed.

53 In United States Circuit Court of Appeals

5812

THE UNITED STATES OF AMERICA, APPELLANT

vs.

ANGIE CROOK WILLIAMS, APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Judgment

December 9, 1936

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Recital as to issuance of mandate

And afterwards, to-wit: on the twelfth day of January 1937 the mandate of this court issued to the District Court of the United States for the Northern District of Illinois, Eastern Division.

54 [Clerk's Certificate to foregoing transcript omitted in printing.]

55 Supreme Court of the United States

Order allowing certiorari

Filed April 26, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File No. 41335. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 795. The United States of America, petitioner, vs. Angie Crook Williams. Petition for a writ of certiorari and exhibit thereto. Filed March 9, 1937. Term No. 795 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1937

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 795

UNITED STATES OF AMERICA, PETITIONER

v.

ANGIE CROOK WILLIAMS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above entitled case December 9, 1936.

OPINIONS BELOW

The District Court for the Northern District of Illinoi rendered no opinion. The opinion of the Circuit Court of Appeals is reported in 86 F. (2d) 746.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 9, 1936. The jurisdiction of

this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an agreement between the mother of a boy seventeen years of age and a recruiting officer of the United States Navy, under which the mother consented to her son's enlistment in the naval service upon the condition that a $10,000 contract of war risk term insurance naming her as beneficiary be carried on his life throughout the period of his enlistment, was binding on the United States and entitled the mother to death benefits under an insurance contract subsequently issued despite a written cancellation of the insurance by the insured eleven months prior to his death and the non-payment of premiums thereafter.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are copied in the Appendix, *infra,* pp. 12–16.

STATEMENT

The suit was brought by Angie Crook Williams, the respondent, hereinafter called the plaintiff, as the beneficiary named in a $10,000 contract of war risk term insurance issued to her son, Benson Williams, upon his enlistment in the United States Navy. In her declaration she alleged that the contract was in full force and effect when the insured was officially declared dead on June 30, 1921, and

that she was entitled to death benefits as the designated beneficiary (R. 2–4). The answer filed by the United States denied that the contract was in force on June 30, 1921, or that there was any liability on the part of the United States under the insurance contract for the reason that the insured cancelled his insurance by written request on July 20, 1920, and paid no premiums thereon after July 1920, resulting in a lapse of the contract at midnight August 31, 1920 (R. 5–7). Replying to this answer, the plaintiff contended for the first time that there was an agreement between herself and a recruiting officer under which insurance was to be carried by her son and that the cancellation was ineffective, alleging (R. 7–8):

> that at the time of the enlistment of said insured and the execution of the insurance contract herein involved said insured was an infant under the age of twenty-one (21) years, and that said defendant required said plaintiff herein as mother of said infant to sign a release and written consent for said enlistment and that said release or written consent had a provision therein that in consideration of said plaintiff executing said written release and consent, the said defendant herein would issue to said insured a certificate of war risk insurance, payable to said plaintiff, extending through the period of said enlistment or until said insured became twenty-one (21) years of age. That he became and was a party to said insurance

> contract and that said pretended cancellation of said insurance as alleged in said answer without notice to plaintiff was void and of no force and effect.

At the trial it was stipulated (R. 15, 16) that Benson Charles Williams, the insured, born August 27, 1901, enlisted in the United States Navy on January 13, 1919, at the age of seventeen years. On that date he applied for and was granted a $10,000 war risk insurance policy, naming his mother, the plaintiff, as beneficiary. In his application he authorized the deduction of premiums from his monthly service pay, and premiums were in fact deducted in this manner for the period from January 13, 1919, to July 1920. On July 20, 1920, when he was eighteen years of age he executed the following request:

> I hereby request that my insurance be reduced from $10,000 to none Dollars.

This request, properly witnessed, was forwarded through naval channels to the Bureau of War Risk Insurance. No premiums were deducted from his pay or paid in any other manner after July 1920.

Some eight months later Williams sailed as a member of the crew of the U. S. S. *Connestoga* from California bound for Samoa. The ship was never heard from after that date and the Navy Department officially declared all members of the crew dead as of June 30, 1921.

The evidence of the alleged agreement entered into between the plaintiff and the recruiting officer

consisted of the plaintiff's own testimony (R. 22); the testimony of her husband, Roland E. Williams (R. 19, 20–21), and a third party (R. 16). The form was not produced because apparently not of record (R. 21). The three witnesses testified, over the objection of Government counsel, that there was typewritten across the face of the form of the consent to enlistment which the plaintiff and her husband signed a clause providing that their son, the insured, carry a $10,000 policy of insurance during his period of enlistment, naming the plaintiff as beneficiary, and that their consent to his enlistment was made conditional upon the issuance and maintenance of such a contract.

The trial court rendered findings of fact, conclusions of law and a judgment for the plaintiff (R. 10–14) after overruling a motion for judgment made by Government counsel (R. 30) and refusing the requested findings of fact and conclusions of law in its favor presented on behalf of the Government (R. 30–34), to all of which the Government noted an exception. The court found that this alleged agreement was entered into at enlistment and that because of its provisions the insurance contract did not lapse, but instead was in force on June 30, 1921, the date of the insured's death.

The Circuit Court of Appeals affirmed the judgment of the trial court, holding that there was substantial evidence to support the finding that the agreement between the mother and the recruit-

ing officer had been entered into at enlistment; that because of this agreement and the son's minority, the attempted cancellation of July 20, 1920, was ineffective, at least without notice to the mother; that there was a presumption of continuing pay due the insured sufficient to cover premium deductions during the insured's service; and that therefore the policy was continued in force until the sailor's death on June 30, 1921.

SPECIFICATIONS OF ERROR TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the agreement between the mother and the recruiting officer was binding upon the United States by estoppel or otherwise.

(2) In holding that the agreement vested an interest in the war risk insurance in the mother as beneficiary which the insured was powerless to disturb.

(3) In holding that the common law doctrine of infancy applies to persons under the age of twenty-one in relation to their contracts of insurance with the Government.

(4) In holding that the cancellation of insurance was ineffective although made by the insured after he had attained the age of 18, when parental consent to his enlistment was no longer required.

(5) In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The decision of the Circuit Court of Appeals is in conflict with applicable decisions of this Court and with decisions of other Circuit Courts of Appeals, and is of possible far-reaching importance.

The Circuit Court of Appeals held that the alleged agreement entered into between the recruiting officer and the mother of the insured attempting to make the enlistment of the insured conditional upon the issuance and continuance in force of the war risk insurance contract on the life of her son was binding upon the United States.

(1) We submit that this holding is in conflict with the decisions of this Court that the United States is neither bound nor estopped by the acts of its officers and agents in entering into an agreement or arrangement in excess of their authority. *Wilber National Bank* v. *United States,* 294 U. S. 120; *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409; *Sutton* v. *United States,* 256 U. S. 575, 579. There was no Federal statute or regulation authorizing or empowering a recruiting officer or any other agent of the Government to enter into any such agreement or arrangement on behalf of the United States.

(2) We submit that this holding is in conflict with the decision of this Court in *White* v. *United States,* 270 U. S. 175, that a beneficiary may not acquire a vested interest in a contract of war risk insurance which the insured is powerless to dis-

turb. The terms of the contract, found in part in the policies and in part in the statutes under which they were issued and the regulations promulgated thereunder (*White* v. *United States, supra; Lynch* v. *United States,* 292 U. S. 571), conferred upon the insured the right to cancel his insurance, in whole or in part, by written request duly witnessed and forwarded through certain channels to the Bureau of War Risk Insurance (T. D. No. 48, *infra,* pp. 14–15; War Risk Insurance Circular No. 1, *infra,* pp.15–16), and also conferred upon him the right to change the beneficiary at any time without the consent of the beneficiary (Section 402, War Risk Insurance Act, *infra,* pp. 12–13, and Bulletin No. 1, *infra,* pp. 13–14). In upholding this agreement, the Circuit Court of Appeals has sanctioned a material alteration in the war risk contract, a change both in the form and substance of that contract as provided by the statutes and regulations and as construed by this Court in *White* v. *United States, supra.* Here the court below has treated the contract as one between the beneficiary, the Government, and the insured, under which the beneficiary acquired a vested interest which could not be taken away by any act of his, whereas the war risk contract as construed by this Court in the *White* case was one in which the relations of contract were exclusively between the Government and the insured, with any interest which the beneficiary might acquire therein entirely dependent upon the

terms of the contract between the Government and the insured. In making this determination, the court below has likened the case to one where a party having an insurable interest obtains insurance upon another's life, thus acquiring a property right in the resulting contract which is protected against any attempted cancellation by the insured without notice to him. Discussing this feature of the case the court states (86 F. (2d) 746, 747):

> Consequently, the son and the government could not, by arrangement wholly between themselves, without notice to her, set at naught the specified condition. * * *

This expression is clearly in conflict with the principles announced in the *White* case that (p. 180):

> The only relations of contract were between the Government and him [the insured]. White's mother's interest at his death was vested only so far as he and the Government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half. She is a volunteer and she cannot claim more. * * *

See also *United States* v. *Sterling,* 12 F. (2d) 921 (C. C. A. 2d). William's insurance contract, like White's, was between the Government and him, and when he exercised the right thereunder of cancelling his insurance, his beneficiary, being a volunteer, could not complain.

(3) The present opinion announced for the first time the doctrine that the common law principles of infancy apply to Government insurance contracts, making them voidable during infancy and subject to disaffirmance upon attaining majority. This doctrine is in direct conflict with the principles announced by the Court of Appeals of the District of Columbia in *Von Der Lippi-Lipski* v. *United States,* 4 F. (2d) 168. In that case the court said (p. 169):

> From the general purpose and subject-matter of the War Risk Insurance Act, and the amendments thereto, it is apparent that Congress intended to extend to minors, who served in the armed forces of the United States, all of the rights and privileges, and to subject them to all of the conditions and limitations, contained therein. Minors are not excepted from its operation. No distinction is made as to age. They were not only eligible to service, but were drafted into the military and naval forces during the war, and the only limitation as to age is that provided by the laws and regulations pertaining to such service.

Moreover, the question is of paramount importance. Newly enlisted personnel of the Army, Navy, and Marine Corps may apply for and obtain Government insurance at the present time. Section 300 of the World War Veterans' Act, as amended by the Act of May 29, 1928, c. 875, Sec.

13, 45 Stat. 967, 968 (U. S. C., Title 38, Sec. 511). Many of the present enlistments, perhaps a majority, are of minors, and, if the contracts of Government insurance which these minors obtain are subject to the disability of infancy, as the opinion in the present case seems to hold, such infants could, for example, disaffirm their contracts of insurance upon attaining majority and recover back the premiums paid thereon. See *Mutual Life Insurance Co.* v. *Schiavone,* 71 F. (2d) 980 (App. D. C.), cited and relied upon by the court below in its opinion.

(4) Moreover, it should be noted that when the insured cancelled his insurance he was 18 years of age and parental consent was no longer necessary to his enlistment under the statute. (Sec. 2, Act of August 22, 1912, *infra,* p. 13.) It would seem to follow that he was emancipated from parental control in so far as his naval service was concerned and was free to disaffirm any contracts made in respect to such insurance. His cancellation was in effect a disaffirmance of the alleged agreement made while he was under the statutory age limit.

For the reasons stated, it is respectfully submitted that this application for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

MARCH 1937.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

Section 400 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 409, provides as follows:

> That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.

Section 402 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 409, provides in pertinent part as follows:

> That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. * * * Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or bene-

ficiaries, but only within the classes herein provided. * * *.

Section 202 of the War Risk Insurance Act of October 6, 1917, 40 Stat. 403, provides as follows:

> That the enlisted man may allot any proportion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively.

U. S. C., Title 34, Sec. 161 (Act of August 22, 1912, c. 336, Sec. 2, 37 Stat. 356), provides as follows:

> No minor under the age of fourteen years shall be enlisted in the naval service; and minors between the age of fourteen and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardians.

Bulletin No. 1, promulgated by the Director of the Bureau of War Risk Insurance on October 15, 1917, prescribing the terms and conditions of war risk insurance, contains the following pertinent provisions:

* * * * *

> The insured may at any time, subject to the regulations of the bureau, change the beneficiary or beneficiaries to any person or persons within the classes permitted by the act, without the consent of the beneficiary or beneficiaries.

* * * * *

> Premiums shall be paid monthly on or before the last day of each calendar month and will, unless the insured otherwise elects in writing, be deducted from any pay due him/her from the United States or deposit by him/her with the United States, and, if so to be deducted a premium when due will be treated as paid, whether or not such deduction is in fact made, if upon the due date the United States owe him/her on account of pay or deposit an amount sufficient to provide the premium, provided that the premium may be paid within 31 days after the expiration of the month, during which period of grace the insurance shall remain in full force. If any premium be not paid, either in cash or by deduction as herein provided, when due or within the days of grace, this insurance shall immediately terminate, but may be reinstated within six months upon compliance with the terms and conditions specified in the regulations of the bureau.
>
> * * * * *
>
> These terms and conditions are subject in all respects to the provisions of such act and of any amendments thereto and of all regulations thereunder now in force or hereafter adopted.

Treasury Decision No. 48, War Risk Insurance, September 29, 1919, made pursuant to Section 13 of the War Risk Insurance Act, provides in pertinent part as follows:

> The yearly renewable term insurance shall, however, lapse and terminate: * * *
> (c) Upon written request duly witnessed and forwarded through military channels to the Bureau of War Risk Insurance for cancellation of the insurance in whole or in

part, and corresponding cessation or reduction of the payment of premiums.

War Risk Insurance Circular No. 1 provides as follows:

NAVY DEPARTMENT,
BUREAU OF SUPPLIES AND ACCOUNTS,
Washington, D. C., November 15, 1918.

To Commandants, Commanding Officers, and Officers of the Pay Corps:

The following instructions are issued for the guidance of all concerned in the matter of War Risk Insurance and Family Allotments. They combine all instructions, completely revised to date, which have been issued. In the future all instructions regarding War Risk Insurance and Family Allotments will be issued from the Allotment Division, Bureau of Supplies and Accounts.

McGOWAN.

* * * * *

INSURANCE

* * * * *

8. In no case will Insurance premiums be prorated. The premium charged for insurance shall be entered on the debit side of the pay roll in the column headed, "War Risk Insurance Premiums." Checkage of one month's premium shall be made on the day the application is executed and, thereafter, one month's premium shall be checked on the first day of every month. Checkage must be made on the Navy pay roll of premium for every application for insurance executed by officers or men of the NAVY. Checkage of insurance premiums will continue while a man is in a pay status, or until the insurance is cancelled by written request

over the man's signature, forwarded through the officer of the Pay Corps carrying his account. The cancellation of insurance at the request of this insured will become effective on the first day of the month following that in which request is made.

* * * * *

14. The checkage of insurance premiums will take precedence over government indebtedness due to property loss, and loss of pay by sentence of deck court, summary court-martial, or general court-martial not involving prison confinement. Sentence of general court-martial involving prison confinement will operate to stop checkage of insurance premiums on the Navy pay roll. In such cases, the man should be instructed to remit, or have someone else remit, the premium directly to the Bureau of War Risk Insurance, or suffer his insurance to lapse. Government insurance may be cancelled for the reasons specified in Section 29 of the War Risk Insurance Act as amended 25 June 1918, or upon the request of the insured over his signature. In all cases where checkage of insurance premium is discontinued, notice thereof should be sent immediately to the Navy Allotment Officer on S. & A. Form 373.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1937

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 11

UNITED STATES OF AMERICA, PETITIONER

v.

ANGIE CROOK WILLIAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court for the Northern District of Illinois rendered no opinion. The opinion of the Circuit Court of Appeals (R. 32–34) is reported in 86 F (2d) 746.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 9, 1936 (R. 34). The petition for a writ of certiorari was filed March 9, 1937, and granted April 26, 1937 (R. 35). The jurisdiction of this Court is conferred by Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an agreement between the mother of a boy seventeen years of age and a recruiting officer of the United States Navy, under which the mother consented to her son's enlistment in the naval service upon the condition that a $10,000 contract of war risk term insurance naming her as beneficiary be carried on his life throughout the period of his enlistment, was binding on the United States and entitled the mother to death benefits under an insurance contract subsequently issued, despite a written cancellation of the insurance by the insured eleven months prior to his death, and the nonpayment of premiums thereafter.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are copied in the Appendix, *infra,* pp. 19–24.

STATEMENT

The respondent, Angie Crook Williams, hereinafter called the plaintiff, brought this suit against the petitioner, the United States, as the beneficiary named in a $10,000 contract of war risk term insurance issued to her son, Benson Williams, upon his enlistment in the United States Navy. In her declaration she alleged that the insurance contract was in full force and effect when her son was officially declared dead on June 30, 1921, and that she

was entitled to death benefits as the designated beneficiary (R. 1–2).

In its answer, the United States denied that the insurance contract was in force on June 30, 1921, for the reason that "on July 20, 1920, the said insured by written request cancelled said contract of insurance and paid no premiums thereon after July 1920, and said contract lapsed and became of no force and effect after midnight of August 31, 1920" (R. 3–4).

Replying to this answer (R. 4–6), plaintiff asserted for the first time the theories upon which she intended to rely to show that the insurance was in force at the time of death, notwithstanding the cancellation eleven months earlier. She contended that the cancellation without notice to her was void in view of an agreement which she had entered into with the recruiting officer at enlistment, the nature of which is more particularly set forth in the following quoted portion of the replication (R. 5)—

> that at the time of the enlistment of said insured and the execution of the insurance contract herein involved said insured was an infant under the age of twenty-one (21) years, and that said defendant required said plaintiff herein as mother of said infant to sign a release and written consent for said enlistment and that said release or written consent had a provision therein that in consideration of said plaintiff executing said written release and consent, the said defendant herein would issue to said insured a cer-

tificate of war risk insurance, payable to said plaintiff, extending through the period of said enlistment or until said insured became twenty-one (21) years of age. That he became and was a party to said insurance contract and that said pretended cancellation of said insurance as alleged in said answer without notice to plaintiff was void and of no force and effect.

She further contended (R. 5–6) that, because of the insured's infancy, his "contract" cancelling the insurance was subject to avoidance by him upon attaining majority, or by his personal representatives in the event of death before majority, and that she, as beneficiary and personal representative of the insured, who died before attaining majority, did rescind the "contract" cancelling the insurance as soon as she was notified thereof, offering to pay all premiums which may have been due thereon.

She further alleged (R. 6) that at the time of the issuance of the insurance contract insured authorized the defendant to deduct premiums from his service pay; that at all times during the insured's enlistment and after the cancellation there was due and owing from defendant to the insured sufficient money to pay all premiums as they became due, and that by reason thereof the insurance remained in force until the death of the insured.

The case was tried by the court, a jury having been waived in writing (R. 10). At the trial it was stipulated (R. 10–11) that Benson Charles

Williams, the insured, born August 27, 1901, enlisted in the United States Navy on January 13, 1919, at the age of seventeen years. On that date he applied for and was granted a $10,000 war risk insurance policy, naming his mother, the plaintiff, as beneficiary. In his application he authorized the deduction of premiums from his monthly service pay, and premiums were in fact deducted in this manner for the period from January 13, 1919, to July 1920. On July 20, 1920, he executed the following document (R. 11):

> I hereby request that my insurance be reduced from ten thousand dollars to None dollars.

This request was signed by the insured and witnessed and, on July 21, 1920, the United States Navy Department discontinued the deduction of insurance premiums from the insured's pay, collecting no premiums after the premium for the month of July 1920. The Disbursing Officer of the United States Navy notified the War Risk Insurance Division that the checkage of premiums on the pay roll of the insured had been discontinued, and that the date of the last checkage of premiums was July 1920. There was no evidence or finding that premiums were paid in any other manner after July 1920.

It was stipulated that the records of the Veterans' Administration did not disclose whether or not the insured received any pay after April 12, 1921 (R. 11). It was also stipulated that, some

eight months after the cancellation, the insured sailed as a member of the crew of the U. S. S. *Connestoga* from California bound for Samoa. The ship was never heard from after that date, and the Navy Department officially declared all aboard, including officers and crew, dead as of June 30, 1921 (R. 10).

The evidence of the alleged agreement between the plaintiff and the recruiting officer, under which the insurance contract was to be continued in force during the insured's enlistment (R. 15), or until he attained the age of twenty-one (R. 5), consisted of the plaintiff's own testimony (R. 16); the testimony of her husband, Roland E. Williams (R. 14–15); and a third party (R. 11–14). From the testimony of these three witnesses, particularly that of Roland E. Williams (R. 15), it appeared that there was typewritten across the face of the form of the consent to enlistment which the plaintiff and her husband signed a clause providing that their son should carry a $10,000 policy of insurance during his period of enlistment, naming the plaintiff as beneficiary, and that without such clause the consent to enlistment would not have been signed. The form of consent to enlistment which the plaintiff called upon the Government to produce was not produced because not found in the records of the Navy Department (R. 15).

The trial court gave judgment for the plaintiff (R. 6), rendering findings of fact and conclusions

of law in support thereof (R. 7–10). A motion for judgment, made by Government counsel at the close of the evidence (R. 23), was overruled (R. 25), and requested findings of fact and conclusions of law presented on behalf of the Government (R. 23–25) were denied (R. 25), to all of which the Government noted exceptions. The trial court found that the alleged agreement was entered into; that the insurance was issued; that the insured executed a request for the cancellation of the insurance; that premium deductions were discontinued upon the insured's application, but that he continued to be entitled to pay in excess of all premiums due; and that after notice of the death of insured and of his prior request for cancellation, the plaintiff "rescinded said pretended cancellation", and the court concluded, as a matter of law, that the insurance was in force when the insured died (R. 7–10).

The Circuit Court of Appeals affirmed the judgment of the trial court, holding that there was substantial evidence to support the finding that the agreement between the parents and the recruiting officer had been entered into at enlistment; that because of this agreement and the son's minority, the attempted cancellation of July 20, 1920, was ineffective, at least without notice to the mother; that there was a presumption of continuing pay due the insured sufficient to cover premium deductions during the insured's service; and that, there-

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fore, the policy was continued in force until the insured's death on June 30, 1921 (R. 32–35).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the agreement between the mother and the recruiting officer was binding upon the United States by estoppel or otherwise.

(2) In holding that the agreement vested an interest in the war risk insurance in the mother, as beneficiary, which the insured was powerless to disturb.

(3) In holding that the common-law doctrine of infancy applies to persons under the age of twenty-one in relation to their contracts of insurance with the Government.

(4) In holding that the cancellation of insurance was ineffective although made by the insured after he had attained the age of eighteen, when parental consent to his enlistment was no longer required.

(5) In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

The insured cancelled his insurance and thereafter, for eleven months, until he died, no premiums were paid upon it. Thus, the insurance admittedly lapsed, unless, as the respondent contends, the cancellation was ineffective because of (1) an agreement between the parents of the insured and a recruiting officer under which the

parents consented to the enlistment of the insured, then under the age of eighteen, upon the condition that he carry insurance in behalf of his mother during his enlistment, and (2) the infancy of the insured.

But the agreement was invalid because the recruiting officer was without statutory authority to enter into it and it was inconsistent in its terms with specific provisions of the statutes relating to the insurance. In any event, the permissible life of the agreement ceased prior to the cancellation of the insurance when insured attained the age of eighteen years and parental consent to his naval service was no longer required.

Moreover, the cancellation was not rendered ineffective by the age of the insured, because Congress has not differentiated between adults and minors with respect to insurance rights and obligations of persons in service.

ARGUMENT

It is undisputed that the insurance in question was cancelled in July 1920; that no premiums were paid thereafter; and that the death of the insured, the contingency relied upon as having matured the insurance contract, occurred on June 30, 1921, eleven months after the cancellation (R. 10–11). It is therefore clear that no insurance was in force when the insured died unless, as the respondent contends, the cancellation was ineffective because of (1) the agreement between the parents of the

insured and the recruiting officer and (2) the infancy of the insured.

I

THE CANCELLATION WAS NOT RENDERED INEFFECTIVE BY THE AGREEMENT BETWEEN THE PARENTS AND THE RECRUITING OFFICER. THIS AGREEMENT WAS NOT VALID BECAUSE NOT AUTHORIZED BY THE APPLICABLE STATUTES OR REGULATIONS AND REPUGNANT THERETO

The court below held (R. 32) that there was substantial evidence to support the findings of the trial court (R. 8) that:

> At the time of said enlistment, the plaintiff, Angie Crook Williams, mother, and R. E. Williams, father of the said Benson Charles Williams, executed a release and waiver or consent of parents, consenting to said enlistment and releasing their claim to his pay during said enlistment, thereby ratifying and approving of all said transactions. The said consent executed by said parents contained a typewritten clause providing that said consent was executed on condition that the said Benson Charles Williams carry War Risk Insurance in the sum of $10,000.00 in behalf of his mother, the plaintiff, during said enlistment.[1] * * *

[1] The form of consent to enlistment across the face of which it was found that there was written the condition constituting the agreement, was not produced because the form could not be found in the records of the Navy Department (R. 15).

The recruiting officer clearly exceeded his authority in entering into any such agreement. There has never been any statute or regulation authorizing a recruiting officer or any other agent of the Government to accept an applicant for enlistment in the naval service upon the condition that he be insured by the Government for the benefit of another during his enlistment. In fact, instructions to recruiting officers in effect when insured enlisted required them to exercise "great care" to see that no one under their command made any promise or held out any inducement which could not be carried out after enlistment. (See Instructions for Recruiting Officers of the United States Navy, 1918, Par. 31, p. 6; *infra,* p. 24). These instructions would appear to preclude any promise to a parent that insurance would be carried in behalf of such parent, since the statutes relating to war risk insurance specifically provided that the insured should have the right, subject to regulations, to change the beneficiary of his insurance at any time without the consent of such beneficiary (see Section 402, War Risk Insurance Act, *infra,* pp. 19–20), and also provided (Section 13, War Risk Insurance Act, c. 105, 40 Stat. 389) for the issuance of regulations which gave to the insured the right to cancel his insurance (Treasury Decision No. 48, *infra,* p. 21).

These instructions are consistent with sound public policy, obviously opposed to conditional enlistments which might readily defeat necessary control over enlisted personnel.

It is clearly settled that the United States is not bound by the acts of its officers and agents in entering into an agreement or arrangement in excess of their authority. *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 408; *Sutton* v. *United States,* 256 U. S. 575, 579.

Moreover, the agreement was repugnant to the applicable statutes and regulations. The terms of the war risk insurance contract, consisting, in part, of the statutes and, in part, of the regulations promulgated thereunder (Bulletin No. 1, promulgated by the Director of the Bureau of War Risk Insurance on October 15, 1917, *infra,* pp. 20–21; *White* v. *United States,* 270 U. S. 175; *Lynch* v. *United States,* 292 U. S. 571), conferred upon the insured the right to cancel his insurance, in whole or in part, by written request duly witnessed and forwarded to the Bureau of War Risk Insurance (Treasury Decision No. 48, *infra,* p. 21; War Risk Insurance Circular No. 1, *infra,* pp. 22–23), and also conferred upon him the right to change the beneficiary at any time without the consent of the beneficiary (Section 402, War Risk Insurance Act, *infra,* pp. 19–20; Bulletin No. 1, *infra,* pp. 20–21).

In holding that the insurance contract was subject to the agreement made at enlistment, and that the mother acquired a paramount interest in the insurance by virtue of this agreement, the Circuit Court of Appeals has sanctioned a material alteration in the war risk contract, a change both in the

form and substance of the contract as provided by the statutes and regulations, and as construed by this Court in *White* v. *United States, supra.* Here the court below has treated the contract as one between the beneficiary, the Government, and the insured, under which the beneficiary acquired a vested interest which could not be taken away by any act of the insured. In so doing the court has likened the case to one where a party having an insurable interest obtains insurance upon another's life, thus acquiring a property right in the resulting contract which is protected against any attempted cancellation by the insured without notice to him. This, it is submitted, was error, for, as pointed out by this Court in the *White* case, *supra,* a war risk insurance contract is one in which the relations of contract are exclusively between the Government and the insured, with any interest which the beneficiary might acquire therein entirely dependent upon the terms of the contract between the insured and the Government. In the *White* case it was said (p. 180):

> The only relations of contract were between the Government and him [the insured]. White's mother's interest at his death was vested only so far as he and the Government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half. She is a volunteer and she cannot claim more. (Parenthetical insert supplied.)

This opinion has been uniformly followed in determining the rights of beneficiaries under war risk insurance contracts. *Von Der Lippi-Lipski* v. *United States,* 4 F. (2d) 168 (App. D. C.); *Lewis* v. *United States,* 56 F. (2d) 563 (C. C. A. 3d); *Garrison* v. *United States,* 62 F. (2d) 41 (C. C. A. 4th); *United States* v. *Sterling,* 12 F. (2d) 921 (C. C. A. 2d).

Moreover, it should be noted that when the insured cancelled his insurance he was eighteen years of age and, under the pertinent statute, parental consent was no longer a condition to his service. (See Section 2 of the Act of August 22, 1912, *infra,* p. 23.) It would seem to follow that he was completely emancipated from parental control in so far as his naval service was concerned and thus, if the agreement between the parents and the recruiting officer had any validity, the permissible life of that agreement ended with the insured's attainment of eighteen years. Consequently, the exercise by the insured of his right to cancel his insurance cannot be considered to have been in violation of any legitimate right of his parents under their agreement with the recruiting officer.

We submit that the recruiting officer was without authority to enter into the agreement in question; that the agreement was inconsistent with the statute in so far as it attempted to require the designation of the mother as beneficiary of any insurance carried; that the agreement was inconsist-

ent with the power conferred upon the Director to issue regulations under which the insured was given the right to cancel his insurance at any time, and that the agreement was inconsistent with the rights conferred upon the insured himself, at least after the attainment of eighteen years, to change the beneficiary of his insurance or to cancel it.

II

THE INFANCY OF THE INSURED DID NOT RENDER THE CANCELLATION SUBJECT TO DISAFFIRMANCE

The Circuit Court of Appeals also held that the insured could not cancel his insurance because he was a minor, thus applying the common-law doctrine of infancy to a war risk insurance contract. This, it is submitted, was error, since there is not in the War Risk Insurance Act, the World War Veterans' Act, or their amendments, under which this insurance was authorized, any provision showing an intention on the part of Congress to recognize the common-law doctrine of infancy, or to draw any distinction whatever between minors and adults in granting insurance. Speaking of this feature of the insurance program as adopted by the Congress, the Court of Appeals for the District of Columbia, in *Von Der Lippi-Lipski* v. *United States*, 4 F. (2d) 168, said (p. 169):

> From the general purpose and subject-matter of the War Risk Insurance Act, and

> the amendments thereto, it is apparent that Congress intended to extend to minors, who served in the armed forces of the United States, all of the rights and privileges, and to subject them to all of the conditions and limitations, contained therein. Minors are not excepted from its operation. No distinction is made as to age. They were not only eligible to service, but were drafted into the military and naval forces during the war, and the only limitation as to age is that provided by the laws and regulations pertaining to such service.

Minors in the military and naval service are necessarily treated as adults in all respects concerning service and the incidents thereof, even though the service itself may be subject to termination by the parents under certain circumstances. See *In re Davison,* 21 Fed. 618 (C. C. S. D. N. Y.); *United States* v. *Reaves,* 126 Fed. 127 (C. C. A. 5th); *In re Morrissey,* 137 U. S. 157; *Ex parte Dostal,* 243 Fed. 664 (D. C. N. D. Ohio); *United States* v. *Bainbridge,* 24 F. Cas. No. 14,497, 1 Mason, 71; 2 Wheel. Cr. Cas. 521.

In the case of *In re Davison, supra,* it was said (p. 622):

> It is not open to doubt that congress, under the constitutional power "to raise and support armies", may provide for the enlistment of minors, with or without the consent of their parents, and may give such effect and conclusiveness to the contract of enlist-

> ment as it may deem best. And it is equally clear that where the laws of congress authorize the enlistment of minors no question of the capacity of the infant to contract can arise. Whenever the common-law disability is removed by statute, the competency of the infant to do all acts within the purview of the statute is as complete as that of a person of full age.

War Risk insurance was an incident of military and naval service and, in the absence of any express provision to the contrary, it seems clear that Congress intended to vest a minor in the military or naval service with the capacity to take any action relating to such insurance that an adult might take. At the present time, newly enlisted personnel of the Army, Navy, and Marine Corps may obtain Government insurance upon enlistment. Section 300 of the World War Veterans' Act, as amended by the Act of May 29, 1928, c. 875, Sec. 13, 45 Stat. 967, 968 (U. S. C., Title 38, Sec. 511). Many of the present enlistments, perhaps a majority, are of minors, and if the insurance contracts which these minors now obtain are subject to the disabilities of infancy, then they may disaffirm them upon attaining majority and recover back the premiums paid thereon, under the authority of *Mutual Life Insurance Co.* v. *Schiavone*, 71 F. (2d) 980 (App. D. C.), cited and relied upon by the court below in its opinion. Considering the fact that this insurance is granted at an exceedingly low cost, the Government bearing

the expenses of administration, it does not seem reasonable to presume that the Congress intended to make still greater allowances for minors, or to make it possible for them to secure insurance protection free from cost by disaffirming or repudiating their contracts upon attaining majority.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

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Solicitor General.
JULIUS C. MARTIN,
Director, Bureau of War Risk Litigation.
WILBUR C. PICKETT,
Special Assistant to the Attorney General.
THOMAS E. WALSH,
W. MARVIN SMITH,
Attorneys.

SEPTEMBER 1937.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

Section 400 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 409, provides as follows:

> That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female), when employed in active service under the War Department or Navy Department, greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.

Section 402 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 409, provides in pertinent part as follows:

> That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. * * * Subject to regulations, the insured shall at all times have the right to change the benefi-

ciary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided. * * *

Section 202 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 403, provides as follows:

> That the enlisted man may allot any proportion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively.

Bulletin No. 1, promulgated by the Director of the Bureau of War Risk Insurance on October 15, 1917, prescribing the terms and conditions of war risk insurance, contains the following pertinent provisions (Regulations and Procedure, U. S. Veterans' Bureau, 1930, Pt. 2, pp. 1235, 1237):

* * * * *

> The insured may at any time, subject to the regulations of the bureau, change the beneficiary or beneficiaries to any person or persons within the classes permitted by the act, without the consent of the beneficiary or beneficiaries.
>
> * * * * *
>
> Premiums shall be paid monthly on or before the last day of each calendar month and will, unless the insured otherwise elects in writing, be deducted from any pay due him/her from the United States or deposit by

his/her with the United States, and, if so to be deducted, a premium when due will be treated as paid, whether or not such deduction is in fact made, if upon the due date the United States owe him/her on account of pay or deposit an amount sufficient to provide the premium, provided that the premium may be paid within 31 days after the expiration of the month, during which period of grace the insurance shall remain in full force. If any premium be not paid, either in cash or by deduction as herein provided, when due or within the days of grace, this insurance shall immediately terminate, but may be reinstated within six months upon compliance with the terms and conditions specified in the regulations of the bureau.

* * * * *

These terms and conditions are subject in all respects to the provisions of such act and of any amendments thereto and of all regulations thereunder now in force or hereafter adopted.

Treasury Decision No. 48, War Risk Insurance, September 29, 1919, made pursuant to Section 13 of the War Risk Insurance Act, provides in pertinent part as follows (Regulations and Procedure, U. S. Veterans' Bureau, 1930, Pt. 1, pp. 19–20):

> The yearly renewable term insurance shall, however, lapse and terminate: * * * (c) Upon written request duly witnessed and forwarded through military channels to the Bureau of War Risk Insurance for cancellation of the insurance in whole or in part, and corresponding cessation or reduction of the payment of premiums.

War Risk Insurance Circular No. 1 provides as follows:

NAVY DEPARTMENT,
BUREAU OF SUPPLIES AND ACCOUNTS,
Washington, D. C., November 15, 1918.

To: Commandants, Commanding Officers, and Officers of the Pay Corps.

The following instructions are issued for the guidance of all concerned in the matter of War Risk Insurance and Family Allotments. They combine all instructions, completely revised to date, which have been issued. In the future all instructions regarding War Risk Insurance and Family Allotments will be issued from the Allotment Division, Bureau of Supplies and Accounts.

McGOWAN.

* * * * *

INSURANCE

* * * * *

8. In no case will Insurance premiums be prorated. The premium charged for insurance shall be entered on the debit side of the pay roll in the column headed "War Risk Insurance Premiums." Checkage of one month's premium shall be made on the day the application is executed and, thereafter, one month's premium shall be checked on the first day of every month. Checkage must be made on the Navy pay roll of premium for every application for insurance executed by officers or men of the NAVY. Checkage of insurance premiums will continue while a man is in a pay status, or until the insurance is cancelled by written request over the man's signature, forwarded through the officer of the Pay Corps carrying his ac-

count. The cancellation of insurance at the request of this insured will become effective on the first day of the month following that in which request is made.

* * * * *

14. The checkage of insurance premiums will take precedence over government indebtedness due to property loss, and loss of pay by sentence of deck court, summary court-martial, or general court-martial not involving prison confinement. Sentence of general court-martial involving prison confinement will operate to stop checkage of insurance premiums on the Navy pay roll. In such cases the man should be instructed to remit, or have someone else remit, the premium directly to the Bureau of War Risk Insurance, or suffer his insurance to lapse. Government insurance may be cancelled for the reasons specified in Section 29 of the War Risk Insurance Act as amended 25 June 1918, or upon the request of the insured over his signature. In all cases where checkage of insurance premium is discontinued notice thereof should be sent immediately to the Navy Allotment Officer on S. & A. Form 373.

* * * * *

U. S. C., Title 34, Sec. 161 (Act of August 22, 1912, c. 336, Sec. 2, 37 Stat. 356), provides as follows:

> No minor under the age of fourteen years shall be enlisted in the naval service; and minors between the age of fourteen and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardians.

Instructions for Recruiting Officers of the United States Navy, 1918, paragraph 31, p. 6, provides as follows:

> 31. The R. O. shall carefully explain the regulations regarding enlistments, promotions, and discharges to those offering to enlist, explaining to them the kind of life they are to lead and that it will be mostly spent on board ship. He will use great care to see that no one under his command *makes any promise or statements to applicants regarding advancements, assignment, instruction, or benefits in the Navy which can not be carried out after enlistment,* and to have each applicant distinctly understand that discharge will not be granted prior to the expiration of enlistment, with the exception that under certain conditions he may be granted a furlough for a period covering the unexpired portion of his enlistment.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. [redacted] 11

UNITED STATES OF AMERICA

vs.

ANGIE CROOK WILLIAMS.

RESPONDENT'S BRIEF.

√Perry Smith
FRANK C. WADE,
W. J. DOYLE,
Attorneys for Respondent.

THE DONNELLEY-WARREN PRINTING COMPANY, 350 WEST MADISON, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 795.

UNITED STATES OF AMERICA

vs.

ANGIE CROOK WILLIAMS

RESPONDENT'S BRIEF.

QUESTION PRESENTED.

We accept the "Question Presented" and "Statement" of petitioner, except we are unable to discover any "agreement between a boy seventeen years of age and a recruiting officer of the United States Navy".

STATEMENT.

This is an ordinary suit on a War Risk Insurance contract issued on the life of one, Benson Charles Williams, a seventeen year old boy, when he enlisted in the United States Navy, in which his mother, the respondent herein, was named beneficiary.

Reasons for Denying the Writ.

The law specifically provides that the parents or guardian of the insured must give a written consent to his enlistment and the insurance contract recites it is subject to all laws and regulations relating thereto. (Petition, pp. 12-16.)

The trial court found the certificate was regularly issued, provision made for the deduction of premiums from the insured's pay, as is the custom in all government insurance contracts, and that the insurer was at all times indebted to insured in sums in excess of the premiums as they became due up to the time of his death. It was further found that as a part of said insurance contract the insurer and insured, for a valuable consideration, agreed with respondent to keep this insurance in force during the minority of insured, and in law that it was in force at the death of insured. (Trans., 11-14.) These "Findings of Fact" and "Conclusions of Law" are conclusive in this review.

We are unable to discover any facts or law in this case that invoke the jurisdiction of this Court under subdivision (b) of Section 5, Rule 38 of the Supreme Court of the United States.

There is no question as to the authority of the defendant to enter into the insurance contract under the War Risk Insurance Act and under U. S. C. Title 34, Section (116) (Acts of August 22, 1912, c. 336, Sec. 2, 37, Stat. 356), the consent of parents or guardian is mandatory. (Petition, p. 13.) There are no restrictions or directions as to the form or contents of the consent, therefore, the officer designated to secure the same is authorized to make reasonable conditions and provisions therein. There is nothing in this case to invoke the jurisdiction of this Court.

The United States can act only through its officers and agents and when given general authority by Congress to

make a contract such general authority carries with it authority to determine the form and conditions of such contract. Congress has authorized and made it mandatory that the United States Navy secure consent of parents or guardian for the enlistment of minors under the age of seventeen, with no restrictions or directions as to form or provisions of said consent. This, the trial and Circuit Court of Appeals have held authorized the execution of the contract herein involved.

The execution of the consent, the enlistment and the issuing of the insurance constitute one transaction, were all necessary to and are a part of the insurance contract and thereby the respondent became and is more than an ordinary beneficiary. Upon said enlistment and issue of the insurance, in accordance with the terms of the consent, the respondent became the beneficiary with a vested interest for a valid consideration. Such an interest cannot be divested by the insurer and insured without her knowledge or consent. This is merely a three party contract, duly authorized by law, regularly executed by the parties, with no claim of fraud or mistake, and this Court has no jurisdiction to review the same.

Respondent respectfully submits that the jurisdiction of this Court is not invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 and that this petition should be denied.

Respectfully submitted,

FRANK C. WADE,
W. J. DOYLE,
Attorneys for Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 11

UNITED STATES OF AMERICA,
Petitioner,

vs.

ANGIE CROOK WILLIAMS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

FRANK C. WADE,
PERRY SMITH,
Attorneys for Respondent.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 11.

UNITED STATES OF AMERICA,
Petitioner,

vs.

ANGIE CROOK WILLIAMS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

STATEMENT OF THE CASE AND THE FACTS.

This is a suit on a War Risk Insurance certificate issued on the life of Benson Charles Williams, a seventeen-year-old boy, when he enlisted in the United States Navy for the period of his minority. The law requires a parental release or consent before he could be accepted for enlistment, but makes no provisions as to the terms thereof. The release or consent, the enlistment, the application for insurance, the request for deduction of premiums from pay and the issue of insurance certificate were all executed and became effective at the time of enlistment; and, in the release or

consent, the one necessary before any others could be negotiated, a provision was inserted that it was given only on condition that the insurance herein involved issue and continue in force during insured's minority. This provision was accepted by both insured and insurer, and in compliance therewith, a request for the deduction from insured's pay was executed by the insured, accepted by the insurer, and the insurance duly issued, naming respondent beneficiary. Some two years later, while insured was yet an infant, he made written request that his insurance be discontinued and said request was accepted and acted upon by insurer, all without the knowledge or consent of the respondent, notwithstanding the specific provisions of the consent or release by the parents that it must continue during insured's infancy. The insured continued in the service approximately ten months after his request for the discontinuance of his insurance and on each premium paying date there was sufficient money due from insurer, for his services, from which to pay his premiums, had the insurer deducted the same from his pay as per written arrangement made at time of enlistment; but no premiums were deducted after said written request by the infant to discontinue said insurance. The insured, yet an infant, during said enlistment was declared dead as of June 30, 1921. Upon notice of insured's death, the beneficiary made claim for this insurance and when notified of the written request for the discontinuance of said insurance, as his personal representative, immediately rescinded and repudiated the same, offered to pay any and all premiums that might be due and renewed her claim and demand for payment of the insurance. (Findings of Fact, R. 7, 8, 9.)

The judgment was rendered on October 11, 1935. (R. 25.) Appeal was granted and citation returnable in twenty-five days was issued October 14, 1935, during the October, 1935 term of said court, which term ended in November, 1935.

(R. 29.) No further action was taken until January 7, 1936, during the second subsequent term of said court, at which time an order was made extending the time within which to settle, sign, and file a Bill of Exceptions to March 3, 1936 and on March 3, 1936 another order was entered, extending the time to March 11, 1936, in which to settle, sign, and file a Bill of Exceptions, and on March 11, 1936 the Bill of Exceptions was settled, signed and filed. (R. 28-29.) On April 4, 1936 respondent herein filed a motion to dismiss the appeal because there was no praecipe filed for said transcript, said transcript was not filed within proper time, and the Bill of Exceptions was not filed within the time required by law and the rules of the court. (R. 30.)

THE ISSUES.

There are three issues involved in this appeal.

First. Does this court have jurisdiction in this case?

Second. Is the contract between the United States Navy and the parents and the insured infant to keep said insurance in force during infancy permissible under the authority granted by Congress and therefore valid and a part of this insurance contract?

Third. Is the United States in this insurance contract bound by the common law rule regarding contracts with infants?

POINTS AND AUTHORITIES.

POINT I.

The first duty of all courts is to look to their jurisdiction, and, if there is any missing link in the chain, jurisdiction must fail, even though not challenged. Jurisdiction cannot be waived nor assumed.

Exporters of Manufacturers' Products, Inc. v. *Butterworth-Judson Co.*, 258 U. S. 366.

Continental National Bank of Memphis, Tenn. v. *G. C. Buford*, 191 U. S. 119.

Julius K. Graves v. *Chester C. Corbin*, 133 U. S. 571.

Chicago, Burlington and Quincy Ry. Co. v. *Erastus W. Willard, Adms.*, 220 U. S. 413.

Mansfield, Coldwater and Michigan Railroad Co. v. *John Swain et al.*, 11 U. S. 379.

POINT II.

The Bill of Exceptions must be settled, signed by the trial court, and filed during the term of court in which the judgment was rendered. This record discloses the Bill of Exceptions was not settled, signed, and filed during said term, or an extension thereof, and, therefore, the trial court lost jurisdiction and the proposed Bill of Exceptions was not before the Circuit Court of Appeals and is not before this court.

Rieke Metal Products Co. v. *Finney* (C. C. A. 7), 70 F. (2d) 509.

St. Joseph Loan & Trust Co. v. *Studebaker Corporation* (C. C. A. 7), 66 F. (2d) 151.

Exporters of Manufacturers' Products, Inc. v. *Butterworth-Judson Company*, 258 U. S. 362.

Point III.

A reviewing court, in the absence of a Bill of Exceptions, is limited on appeal to question whether findings, made part of record, justify judgment.

Hallenback v. *Leimert* (C. C. A. 7), 72 F. (2d) 480.

Point IV.

This insurance was duly issued and all laws and regulations in connection therewith are a part thereof.

> "This certifies that *Benson Charles Williams* has applied for insurance in the amount of $10,000.00, payable in case of death or total permanent disability in monthly installments of $57.50. Subject to the payment of the premiums required, this insurance is granted under the authority of an Act amending 'An Act to authorize the Establishment of a Bureau of War Risk Insurance in the Treasury Department', approved October 6, 1917, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract." (Insurance contract.)

Point V.

When Congress by law requires the Navy to secure the written release or consent of parents to an infant's enlistment, with no limitation or directions, it grants the proper officer or agent authority to exercise his discretion as to terms and details thereof, and the only restriction imposed by implication or otherwise is that it be reasonable and in accordance with the general purpose of the Act authorizing

the same. The agreement to carry War Risk Insurance during the infancy of insured is legal, reasonable and within the implied authority granted the Navy in securing the parental consent to said enlistment.

Swayne and Hoyt v. *U. S.*, 57 S. Ct. 478.
Chesapeake and O. Ry. v. *Stapleton*, 279 U. S. 587.

Point VI.

When the United States entered the field of insurance it assumed all obligations of any other insurer, except the restrictions or limitations it specifically imposed.

Cook v. *United States*, 91 U. S. 389.
White v. *United States*, 270 U. S. 175.
Lynch v. *United States*, 292 U. S. 751.
Davis v. *Prugle*, 268 U. S. 315.
United States v. *Knott*, 298 U. S. 544.

Point VII.

Insurance contracts may consist of several separate documents, which must be construed together, if possible.

Aetna Insurance Company v. *Houston Oil and Transport Company*, 49 F. (2d) 121.

Point VIII.

The beneficiary of a War Risk Insurance certificate has only the rights given by the insured and the insurer and unless there is more to the contract than the ordinary War Risk Insurance certificate, the beneficiary has no vested interest, but, if for a valuable consideration, the insured and insurer, by contract grant the beneficiary a vested interest, the same cannot be divested by the connivance or joint ac-

tion of the insured and insurer without the knowledge and consent of the beneficiary.

> "White's mother's interest at his death *was vested only so far as he and the Government had made it so and was subject to any conditions upon which they might agree.*" (Our italics.)
>
> *White* v. *United States*, 276 U. S. 175.

See also

Manhattan Life Insurance Company v. *Smith*, 44 Ohio St. 155-6 N. E. 417.

Bank of Washington v. *Hume*, 128 U. S. 195.

Aetna Life Insurance Company v. *Phillips*, 60 F. (2d) 901.

Helvering v. *Parker*, 84 F. (2d) 838.

Point IX.

Regulations adopted by the Veterans' Administration regarding War Risk Insurance contracts have the force of law and become a part of each contract, but an insurance contract entered into on behalf of the United States, by an authorized representative, beyond the authority of such regulations, may be ratified by the Veterans' Administration and become binding on all parties thereto, provided, the authority granted the Veterans' Administration by Congress would have permitted the adoption of regulations authorizing such a contract.

Swayne and Hoyt v. *United States*, March 1, 1937, 57 S. Ct. 478.

Point X.

The insurance contract herein involved, including the consent of parents, was ratified by the Veterans' Administration in its execution and delivery of the certificate and its deduction of premiums from insured's pay, in accordance therewith, all of which is and was permissible under the authority granted by Congress. The provision that the insurance could not be cancelled without the parents' consent is lawful because it is merely an agreement to protect the infant and his parents in accordance with the common law requiring the written waiver or consent to his enlistment.

Danbar v. *Danbar*, 190 U. S. 340.

Point XI.

Persons dealing with the United States are charged with notice of limitation of its agent's authority, but if through mistake of the government's representative, the contract exceeds his authority, the contracting party should not be made to suffer unless the contract is prohibited.

Sutton Trustee in Bankruptcy v. *United States*, 256 U. S. 575.

Wilber National Bank of Oneata, N. Y. v. *United States*, 294 U. S. 120.

White v. *United States*, 276 U. S. 175.

Point XII.

When the United States enters into a contract it so far takes the position of a private person as to agree by implication that justice may be done regarding all rights created by said contract, and "the absence of legal liability in a case where but for sovereignty it would be liable does not destroy the justice of the claim against it. * * * The rea-

sons are strong for not obstructing the application of natural justice against the Government by technical formulas when justice can be done without endangering any public interest."

Luckenback S. S. Co. v. *Norwegian Barque Tlukla,* 266 U. S. 328, 340, 341.

American Propeller and Manufacturing Company v. *United States,* ..... U. S. ....., 57 S. Ct. 521. (March, 1937.)

Point XIII.

"No minor under the age of fourteen years shall be enlisted in the naval service; and minors between the age of fourteen and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardian." Section 161, title 34, U. S. C. A.

Point XIV.

"Contracts of infant which appear on their face to be to his prejudice are void, and other contracts are voidable, except for necessaries furnished to him at fair prices."

Mutual Life Insurance Company of New York v. *Schiavon* (C. C. A. 8) 71 F. (2d) 980.

The contract cancelling this insurance was void because it appears on its face to be to his prejudice. The insurance provides benefits to the insured for total permanent disability and it was to his prejudice to discontinue the same.

"In *Sims* v. *Everhardt,* 102 U. S. 300, 313, 26 L. Ed. 87, 89, which was a suit in equity, this court said:

> 'Without spending time to look at the reason, the authorities are all one way. An estoppel in pais is not applicable to infants, and a fraudulent representation of capacity cannot be an equivalent for actual capacity. *Brown* v. *McCune,* 5 Sandf. 224; *Keene* v. *Coleman,* 39

Pa. 299, 80 Am. Dec. 524. A conveyance by an infant is an assertion of his right to convey. A contemporaneous declaration of his right or of his age adds nothing to what is implied in his deed. An assertion of an estoppel against him is but a claim that he has assented or contracted. But he can no more do that effectively than he can make the contract alleged to be confirmed.' ''

Myers v. *Hurley Motor Co., Inc.*, 275 U. S. 21-27.

Point XV.

Officers and agents of the Government are presumed to act within the authority of their official duties and the burden is on petitioner to show the acts complained of were beyond the authority of said officer or was not authorized by law. There was no law or evidence offered to show his contract was beyond the authority authorizing the same.

Point XVI.

The status of an infant becomes changed when he enlists in the United States Army or Navy and he cannot rescind the same, but his parents or guardian may rescind such contract of enlistment, unless they have consented and become a party thereto.

Frank Morrisey v. *Major David Perry*, 137 U. S. 225.

United States v. *Grimley*, 137 U. S. 147.

Point XVII.

A Sovereign may require the services of its citizens regardless of age on any terms it may designate, but when such services are required or accepted it is bound by the terms of agreement providing for such services.

SUMMARY OF ARGUMENT.

The trial court lost jurisdiction on the first Monday in November, 1935 at the expiration of the October, 1935 term of said Court and because thereof the United States Circuit Court of Appeals for the Seventh Circuit and the United States Supreme Court never acquired jurisdiction.

This is a suit by the mother, beneficiary of a War Risk Insurance contract, issued to her by defendant on the life of her seventeen year old son, in accordance with the law and regulations governing the same, and a special clause or agreement with his parents granting the beneficiary a vested interest in said Insurance. All necessary provisions to keep said insurance in force during said enlistment required of insured and his parents were complied with by them but by a secret contract thereafter consummated between said infant, while still an infant, and said insurer, without the knowledge or consent of the parents, the beneficiary, an attempt was made to cancel and defeat said insurance. Upon the execution of the insurance contract, in accordance with the consent of parents, the beneficiary obtained a vested interest therein that could not be divested or destroyed by the insured and insurer without the knowledge and consent of the beneficiary.

The insured, an infant, made a valid insurance contract with insurer and his parents, wherein, for a valuable consideration, his mother as beneficiary acquired a vested interest. The contract was exceptionally favorable to the infant because of the total permanent disability benefits contained therein and an attempted cancellation thereof is to his prejudice and void. Said contract cancelling said insurance is controlled by the common law rule controlling infants' contracts and if not void, is subject to rescission by the

infant, or in case of death of the infant during infancy, by his personal representatives. The contract attempting to cancel the insurance was duly and timely rescinded by the personal representatives of the infant who died in infancy, therefore is void, and the contract of insurance is and always has been valid.

This contract in its entirety is permissible under the law and regulations, was approved and ratified by the government and honesty and fair dealing demand its fulfillment by the government as well as by the insured and his parents.

ARGUMENT.

Respondent submits this court is without jurisdiction, as there was no proper Bill of Exceptions filed during the trial term of said court and said term or the time for settling, signing, and filing the Bill of Exceptions was not extended therefor, as required by law.

Respondent submits this record discloses the trial court lost jurisdiction of this case at the close of the October, 1935 term of said court, the first Monday in November, 1935, and all proceedings thereafter by the trial or appellate courts are void. Furthermore, the extension of time to March 3, 1936 did not include March 3rd but said time expired at midnight at the close of March 2, 1936 and all attempted action taken thereafter was without jurisdiction of the trial court. (See R. 28-29.)

The sovereign has a right to require the services of its citizens of all ages at any time and upon any terms it elects, but, when the sovereign requires or accepts the services of its citizens, it is bound by the terms of agreement between it and such citizens for such services.

Under Section 161, Title 34, U. S. C. A., *supra,* minors over the age of fourteen are eligible to service in the United States Navy, but none under the age of eighteen can be accepted, except by consent or release of his parents or guardians. This grants the naval officers authority to negotiate with the parents or guardian and contract for the services and enlistment of such minor. This authority has no restrictions and is valid if reasonable and not in conflict with any law or regulations governing the same.

The findings of fact are conclusive that by the terms of said required release or consent of parents, for a valuable consideration, and as a part of the contract of insurance,

the insurer and insured agreed with plaintiff to continue said insurance during minority of insured, thereby granting her a vested interest in said insurance. (Finding VII, R. 8.)

We have been unable to find any case sustaining petitioner's contention in this case. The case of *Van Der Lippi Lipski* v. *United States*, 4 Fed. (2d) 168, holds a similar contract between the beneficiary and an infant insured invalid where the insurer had no part in the contract and the case of *White* v. *United States, supra,* holds that the rights of the beneficiary are controlled entirely by the contract, "the only relations of contract were between the government and him" (insured) "White's mother's" (the beneficiary's) "interest at his death was vested only so far as he and the government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half. She is a volunteer and she can claim no more." In the instant case the beneficiary is not a volunteer but is a party to a valid contract, which for a valuable consideration, gives her a vested interest that could not be divested by the joint acts or connivance of the insured and insurer without her knowledge and consent. This may have been beyond the authority granted by the regulations of the Veterans' Administration in force, but was permissible under the authority granted the Veterans' Administration by Congress and when ratified by the Veterans' Administration in issuing the insurance certificate and deducting premiums from his pay, in compliance therewith, became binding on all parties. This we submit is the law, even if the insured had not been a minor. The consent or release of parents was required, became a part of the insurance contract and, for a valuable consideration, gave the beneficiary a vested interest in the insurance just as definitely as if said insurance contract had contained a clause that the beneficiary had a vested interest that could not be divested without the beneficiary's consent.

The regulation providing insured could change the beneficiary without her consent is a part of all War Risk Insurance contracts and is valid, but a change of beneficiary is not involved in this case and this regulation does not apply. Furthermore, if a special provision in an insurance contract is in conflict with a general provision, the two must be construed together and the special provision is controlling.

If the insurer had not been a party to the special provision of this contract, it would then have come under the rule applied in the Van Der Lippi-Lipski and the White cases, *supra,* but for a valid consideration the beneficiary obtained a vested interest, which takes it out of this rule and her interest became vested and cannot be divested by the insured and insurer without her knowledge and consent.

There is another feature in this case that is conclusive in holding this insurance valid. The insured was an infant and there is nothing in the facts or any law that takes this contract out of the common law rule governing infant's contracts. There is no doubt that the sovereign could require insured's services without the consent of parents had it so desired, but, it did not do so. On the contrary, by requiring the consent of parents or guardian, it specifically recognized the common law rule and made its contracts accordingly. Therefore, the contracts involved herein must be governed by the common law rule as to infants' contracts. This rule is recognized by petitioner in its pleadings in the Van Der Lippi-Lipski case, *supra,* wherein it "interposed a motion to dismiss the amended bill of complaint on the following grounds: * * * and that it appears from the amended bill that the substitution of his wife, Dorthea Reeves Phillips, as beneficiary under said contract, had been affirmed and ratified by Lieut. Phillips after he attained his majority." (P. 169)

There are but two exceptions to an infant's right to rescind his contract. One is a contract for necessaries and the other is his contract of enlistment in the United States Army or Navy. An infant who enlists in the army or navy cannot rescind his contract of enlistment because he is contracting with a sovereign and his status becomes changed. However, this is not the law with his parents. An infant cannot rescind his contract of enlistment, but his parents or guardian can, and their rights have always been recognized. (*Frank Morrisey* v. *Major David Perry.*) This right is recognized in this case by the law providing that release or consent of parents or guardian must be obtained before an infant can be enlisted, if the infant is under eighteen years of age. Had this boy been over 18 years of age, this issue would not be involved in this case.

It necessarily follows that the sovereign may make a valid contract with the parents or guardian and an infant for his enlistment. That is what was done in the instant case and this contract became and is a part of the insurance contract herein involved. The sovereign agreed with the infant and his parents to carry the War Risk Insurance on insured during infancy and it is bound by that contract which became and is a part of or must be construed with this insurance contract.

The contract of enlistment and insurance, including the agreements to carry the insurance during infancy and to deduct the premiums from his pay, was valid and binding on all because the parents joined the infant and insurer therein, but not so with insured's contract with insurer to cancel said insurance. That was a secret contract between the infant insured and insurer to deprive the parent, beneficiary, of a valid, vested interest in the contract of insurance. This they could not do under the terms of his enlistment.

This contract attempting to cancel the insurance is void because it appears on its face to be to the prejudice of the insured infant. The insurance could not be had from any one but the government and "It was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the government to them if not paternal was at least avuncular. It was a relation of benevolence established by the government at considerable cost to itself for the soldier's good." Mr. Justice Holmes, in *White* v. *United States, supra.* This contract provides for disability benefits to insured and a court will take judicial knowledge that the contract cancelling his insurance appears on its face to be to his prejudice and is void.

Assuming, however, that it is not necessarily void, it is voidable and subject to rescission by the infant, or in case of his death while an infant, by his personal representatives. The trial court's finding is conclusive that this cancellation contract was promptly rescinded by insured's personal representatives, and the valid contract of insurance herein involved remained in force. (R. 9)

By contract of insured, with the knowledge and written approval of the parents, the insurer was authorized and agreed to deduct from insured's pay, which under the common law belonged to said parents, the monthly payments of premiums as they became due, and, the findings of fact is conclusive there was at all times sufficient pay due to have paid said premiums as they became due. (R. 8.) The regulations controlling provide that under these facts the insurance remains in force, even if the government failed to make the monthly premium deductions. It is stipulated he remained in the service and the presumption is he continued to earn his pay until death. The defendant also recognized this by paying his personal representatives the pay he earned. There is no issue as to whether there was

at all times sufficient pay due to have more than paid the premiums as they became due.

Section 202 of the War Risk Insurance Act provides:

> That the enlisted man may allot any proporttion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively.

The insured's pay belonged to his parents and by the terms of the consent of parents, under said Section 202 of the War Risk Insurance Act, that portion specifically set apart for the payment of the monthly premiums, became as a compulsory allotment and was not subject to further directions of the enlisted man.

Petitioner calls attention to the Instructions for Recruiting Officers of the United States Navy (R. 24) that, "He will use great care to see that no one under his command makes any promise or statement, assignment, instruction, or benefits in the Navy which cannot be carried out after enlistment, etc." It is presumed he did this and the burden is on petitioner to prove he did not. Petitioner has shown no regulations, law or evidence that this contract in its entirety, or any part thereof, was not permissible and was not sanctioned and ratified by every department of the government therein. It is not only permissible but a commendable contract and petitioner has been unable to call attention to any law or regulation in contravention thereof.

Counsel for petitioner apparently admit the validity of the contract with the parents to carry the insurance during infancy, but argue the government could agree to such a contract to induce the parents to give said consent, and as

soon as said infant arrived at the age of eighteen the government could rescind its valid contract, entered into to induce the parents to release their claim to his earnings during infancy. This would be an outright fraud and will not be permitted. They could not have repudiated any part of this contract subsequent to its execution without the consent of the government. Our government should and must live up to its contract as well as its citizens. Certainly Congress never intended it should not when it required the Navy to secure the release of these parents and authorized the issue of this insurance.

Respondent respectfully submits that this record clearly discloses the contract of insurance herein involved was duly and regularly issued, that the insured and beneficiary complied with all the terms thereof required of them, and said insurance was valid, was in full force and effect at the time of the death of insured, June 30, 1921, and the judgments of the trial court and the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

FRANK C. WADE,
PERRY SMITH,
Attorneys for Respondent.

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PETITION FOR REHEARING.

FRANK C. WADE,
PERRY SMITH,
Attorneys for Respondent.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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PETITION FOR REHEARING.

The United States may require the services of its citizens in its army or navy regardless of age on any terms it may designate, but when such services are required it is bound by the terms of agreement the same as the individual citizen.

There is a law making it necessary to secure the consent of parents or guardian before a minor under the age of eighteen may be enlisted in the United States Navy, which consent when approved and accepted becomes a contract or covenant with said parents or guardian. The parent must release all control of said minor and in return therefor the Government may make any reasonable contract not prohibited by law. When these requirements are met the contract is valid and binding on all parties thereto.

At the time of his enlistment, the insured, a minor under the age of eighteen, in consideration of his parents giving

their necessary consent, and on conditions prescribed by the Secretary of Navy, that it continue during his *minority*, made an allotment of a part of his pay to pay the monthly premiums as they became due. This is in harmony with the scheme of government insurance, was not prohibited by nor in violation of any law and was permissible and provided for in Section 202 of the War Risk Insurance Act.

After the parents executed the consent providing for the continuance of the insurance during minority, under authority of Section 202 of the War Risk Insurance Act, the Secretary of Navy accepted the allotment of a part of insured's pay, under conditions prescribed by him that it would continue during insured's *minority* enlistment. This is permitted and impliedly provided for in said Section 202.

> "That the enlisted man may allot any proportion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, *subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively.*" Section 202 of the War Risk Insurance Act. (Our italics.)

The consent, the allotment by the insured and the acceptance thereof by the Secretary of Navy and the Veterans' Administration became a part of the contract of insurance just as definitely as if all had been reduced to writing in one contract and signed by all parties.

The controlling issue in this case is whether such an agreement is within the scope of the authority of the Secretary of Navy and binding on the United States. Since 1924, in determining the liability of the Government, this Court has held that "The court should not affirm what is clearly an unjust and inequitable result unless under plain compulsion of law." *U. S.* v. *The Thekla-post.*

The statute under which plaintiff's son was accepted is a determination by Congress that minors over 14 and under 18 have capacity to make contracts for service in the Navy, *only* by and with the consent of their parents or guardians. This consent was an unconditional release and after its execution could not be repudiated by either the minor or his parents. In consideration of this release and the allotment made by insured the Government agreed to accept and deduct the allotment of a part of the minor's pay for the monthly premiums, as authorized by said Section 202, *supra,* and to keep the insurance in force during his minority service. This was reasonable, and, after observing and complying therewith for eighteen months, the Government could not rescind nor repudiate its contract. The findings of the trial court are conclusive as to these facts, said Section 202 of the War Risk Insurance Act provides for the allotment under said contract and the agreement to keep the insurance in force is not prohibited by Section 161 U. S. C. 34 *or any other law.*

The common law did not enable a minor or his parents to secure his release because of his minority, but, since the enactment of Section 161 U. S. C. 34, and Section 203 U. S. C. 34, every decision of this and other Federal courts has recognized the parent's right to release, making exceptions only when they had given consent or the minor had committed some offense punishable by court martial.

> "No minor under the age of fourteen years shall be enlisted in the naval service; and minors between the age of fourteen and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardian." Section 161, title 34, U. S. C. A.
>
> "Upon the presentation of satisfactory evidence as to his age, and upon application for discharge by his parent or guardian presented to the Secretary within sixty days after the date of his enlistment, any man enlisted in the naval service, including the Marine

> Corps, under twenty-one years of age, who was enlisted without the written consent of his parent or guarian, if any, shall be discharged for his own convenience." 203 U. S. C. 34.

This statute was in force during all this time.

In re Marrissey (1890) 137 U. S. 157, 159, in interpreting this statute this court said:

> "But this provision is for the benefit of the parent or guardian. It means simply that the Government will not disturb the control of parent or guardian over his or her child without consent. It gives the right to such parent or guardian to invoke the aid of the court and secure the restoration of a minor to his or her control; but it gives no privilege to the minor."

This interpretation of this law stood undisturbed when this mother released and consented to the enlistment of her son, under a written promise by both the son and the Government that this contract would be observed. Can the Government now break faith with her? This interpretation specifically holds the minor cannot break faith with his Government, and, isn't it but fair and logical to now hold he cannot break faith with his mother?

The Government contends and the opinion herein holds the contract of the insured and insurer to continue the insurance in force during minority was not within the scope of the authority of the Secretary of the Navy, who acted through the recruiting officer, and therefore was not permissible nor binding on the United States.

We submit there is no law or regulation prohibiting it, and, every obligation of the entire transaction is legal and in harmony with the whole scheme of enlisting minors under the age of eighteen and the insurance protection of sailors and soldiers. Why should it not be permissible, "where it can be done without endangering any public interest", is not prohibited by any law and has been ratified and accepted by all government agencies dealing with it?

The law provides that an insured may change the beneficiary and the decisions hold he cannot make a contract contrary to this law, but, *there is no law that prevents him from contracting to continue his insurance in force during his minority.*

> "White's mother's interest at his death *was vested only so far as he and the Government had made it so and was subject to any conditions upon which they might agree.*" (Our italics.) *White* v. *United States*, 276 U. S. 175.

A regulation provides he may cancel his insurance, but, since the regulations are within the discretion of the Veterans' Administration, it may be waived or modified by the same authority who made it. The findings are conclusive that this regulation was waived and modified, all of which was approved, in the subsequent enlistment by the Secretary of Navy and in the subsequent issue of the policy and deduction of premiums for eighteen months by the Veterans' Administration.

We submit to forfeit this insurance under these facts is out of harmony with the spirit and whole scheme of veteran's insurance, is not required by any law and is contrary to the decisions of this and all other courts in construing the Government insurance laws.

The United States Government is one individual, of many departments, and the knowledge of a department is the knowledge of the United States. The consent of parents was filed in the Navy department where is remained and possibly was unknown to the Veterans' Administration until the beneficiary made claim for her insurance. This may account for this most unfortunate situation, but it was beyond the control of the beneficiary, and she should not be made the victim thereof.

With the legal knowledge of this agreement for eighteen months the Government accepted and carried out the con-

tract in all its terms and is now estopped to deny its validity.

> "A strong circumstance in favor of this conclusion is the fact that Sato's official acts as commissioner, in this case, were never repudiated by the Government; on the contrary his protocol was received and deposited in the public archives, where it still remains. His official acts, accepted and acquiesced in by the government, must be considered as valid, even if done by him only as a commissioner *de facto.*" *Gonzales* v. *Ross* (1887) 120 U. S. 605-630; 30 L. Ed. 801-810.

> "If it (the Government) comes down from its position of sovereignty, and enters the domain of commerce, it submits itself to the same laws that govern individuals there. * * * But it is insisted on the part of the Government, that as the Act of April 12, 1866, 14 Stat. at L. 31, only authorized the Secretary of the Treasury to retire, before their maturity, notes 'issued' under the authority of some Act of Congress, he could only take up such as were actually put out by the 'physical act' of some authorized officer of the Government in pursuance of law. This, we think, is too narrow a construction of the Act." *Cooke* v. *U. S.* (1875) 91 U. S. 389-405, 23 L. Ed. 237-245.

In the case of *United States* v. *The Thekla* (1924) 266 U. S. 328, 339-340, 341, 45 S. Court 112, 113, 69 L. Ed. 313, this court defined the rule to be followed in cases involving liability of the U. S. Government, and approved and quoted the same on March 29, 1937 in the case of *American Propeller and Manufacturing Company* v. *United States,* (not yet in reports) in determining the liability of the United States for an oligation for which the trial court "could find no authority."

> " 'The absence of legal liability in a case where but for sovereignty it would be liable does not destroy the justice of the claim against it. * * * The reasons are strong for not obstructing the application of natural justice against the Government by techanical formulas when justice can be done without endangering any public interest.' If the principle thus stated is

not strictly applicable, it at least suggests that the court should not affirm what is clearly an unjust and inequitable result unless under plain compulsion of law."

If the decision as it now stands in the case at bar does not overrule the decisions in the two last cited cases, it certainly suggests the abandonment or modification of the rule therein laid down, which was the rule followed by the trial court and Circuit Court in their decisions in this case.

Can there be a stronger appeal "for not obstructing the application of natural justice!" than the case at bar? This mother gave her only son to the service of his country under a written contract "where but for sovereignty it would be liable". The trial court and Circuit Court of Appeals could "find no authority" for "obstructing natural justice" and "the inequity" of avoiding this contract under these findings, "is so gross as to be shocking." (See *American Propeller Company* v. *United States, supra.*)

The trial court, the Circuit Court of Appeals and the Government's attorneys have been unable to find any law that compels or justifies this inequitable result and if this petition is granted there will be no authority for it.

Wherefore, respondent most respectfully prays that she be granted a rehearing and that the decisions of the trial and Circuit Court of Appeals be affirmed.

Respectfully submitted,

FRANK C. WADE,
Attorney for Respondent.

CERTIFICATE OF COUNSEL.

I, Frank C. Wade, hereby certify that I am the solicitor and counsel for Angie Crook Williams, Respondent, in the above entitled action, and that the foregoing petition for rehearing is not presented for purposes of delay or vexation, but is in our opinion well founded in law and fact and proper to be filed herein.

Frank C. Wade.

Subscribed and sworn to before me, a Notary Public, in and for the County of Vigo, State of Indiana, this 24th day of November, 1937.

Harvey Caldwell.
(*Notary Public.*)

My commission expires February 14, 1938.

SUPREME COURT OF THE UNITED STATES.

No. 11.—October Term, 1937.

The United States of America, Petitioner, *vs.* Angie Crook Williams.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 8, 1937.]

Mr. Justice Butler delivered the opinion of the Court.

Respondent brought this suit in the federal court for the northern district of Illinois to recover war risk insurance on the life of her minor son, Benson Charles Williams, who died while serving in the navy. Trial by jury having been waived, the court made findings of fact, stated its conclusions of law and gave judgment for the plaintiff. The Circuit Court of Appeals affirmed. 86 F. (2d) 746.

The findings show: Plaintiff's son was born August 27, 1901, and January 13, 1919, enlisted in the navy for the period of his minority. At that time defendant issued a certificate of term insurance binding itself, in case of his death while insured, to pay plaintiff $10,000 in 240 equal monthly installments; he directed defendant to deduct premiums from his pay; his parents executed a writing by which they consented to the enlistment, released their claim to his pay, approved the transactions between him and defendant and declared that their consent was given on the condition that, during enlistment, he would carry war risk insurance in the sum of $10,000 in behalf of his mother. July 20, 1920, he made written request that his insurance be terminated. Thereafter, defendant made no deductions from his pay on account of premiums. The insured died June 30, 1921. At all times until his death his uncollected pay was more than enough to keep the insurance in force. Upon learning of her son's death plaintiff demanded payment of the insurance. When notified by defendant of her son's cancelation she repudiated it, offered to pay all premiums, reiterated

her claim as beneficiary and, defendant having rejected it, brought this suit.

The Circuit Court of Appeals reasoned as follows: Plaintiff's consent was essential to the enlistment and was given on condition that the insurance be maintained. The minor and defendant could not set the condition at naught. Defendant could not avail itself of his services, to which it was entitled only if his mother so agreed, and ignore the condition upon which the agreement was obtained. Defendant was charged with notice of plaintiff's interest as beneficiary and, the cancelation not having been ratified by her, defendant was bound to collect the premiums and maintain the insurance by deductions from the pay of the insured. On that basis the court concluded that the insurance remained in force and that plaintiff is entitled to recover.

The opinion strongly puts the considerations that make in favor of plaintiff's claim but neglects the distinction between private employment of minors and their service in army or navy and fails to give effect to the law applicable to contracts of enlistment and to the terms upon which the government granted the war risk insurance here in question. In virtue of its power to raise and support armies, to provide and maintain a navy and to make rules for the government of land and naval forces, the Congress may require military service of adults and minors alike.[1] The power of the United States may be exerted to supersede parents' control and their right to have the services of minor sons who are wanted and fit for military service.[2] And the Congress may confer upon minors the privilege of serving in land or naval forces, authorize them to enlist, or draft them upon such terms as it may deem expedient and just.[3]

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[1] Tarble's Case (1871) 13 Wall. 397, 408. In re Grimley (1890) 137 U. S. 147, 153. Selective Draft Law Cases (1918) 245 U. S. 366, 377-378, 386. Hamilton *v.* Regents (1934) 293 U. S. 245, 262-264. United States *v.* Blakeney (1847) 3 Gratt. 405, 408. Lanahan *v.* Birge (1862) 30 Conn. 438.

[2] United States *v.* Bainbridge (1816) Fed. Cas. No. 14,497, p. 950, per Story, J. The Commonwealth *v.* Gamble (1824) 11 Serg. & R. 93, 94, per Gibson, J. Com. ex rel. Engle *v.* Morris (1852) 1 Phila. 381. In the matter of Beswick (1863) 25 How. Pr. 149, 151 Halliday *v.* Miller (1887) 29 W. Va. 424, 439.

[3] United States *v.* Bainbridge (1816) Fed. Cas. No. 14,497, p. 950. In re Riley (1867) Fed. Cas. No. 11,834, p. 797, per Blatchford, D. J. In re Davison (1884) 21 Fed. 618, 622. In re Cosenow (1889) 37 Fed. 668, 670, per Henry Billings Brown, D. J. United States *v.* Blakeney (1847) 3 Gratt. 405, 416. In re Gregg (1862) 15 Wis. 531, 532.

The statute under which plaintiff's son was accepted declares that minors between ages of 14 and 18 years shall not be enlisted in the navy without the consent of their parents.[4] It means that, while minors over 18 may enlist without parental permission, the government elects not to take those between 14 and 18 unless their parents are willing to have them go. It is a determination by Congress that minors over 14 have capacity to make contracts for service in the navy.[5] And it is in harmony with rulings under the common law to the effect that enlistment of a minor for military service is not voidable by him or his parents.[6] Enlistment is more than a contract; it effects a change of status.[7] It operates to emancipate minors at least to the extent that by enlistment they become bound to serve subject to rules governing enlisted men and entitled to have and freely to dispose of their pay.[8] Upon enlistment of plaintiff's son and until his death he became entirely subject to the control of the United States in respect of all things pertaining to or affecting his service.

The statute does not confer upon or leave with the parents any right to condition consent to their sons' enlistment. No Act of Congress permits enlistment of minors upon condition or upon the qualified consent of parents nor does any Act authorize recruiting officers to bind the United States to carry, or to require an enlisted man to carry, war risk insurance for his own protection or for the benefit of any person. It follows that defendant was not bound by the

[4] "No minor under the age of fourteen years shall be enlisted in the naval service; and minors between the age of fourteen and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardians." 34 U. S. C., § 161. (See R. S., §§ 1419, 1420, as amended by Acts: May 12, 1879, 21 Stat. 3; February 23, 1881, § 2, 21 Stat. 338; August 22, 1912, § 2, 37 Stat. 356.)

[5] In re Morrissey (1890) 137 U. S. 157, 159. In re Davison (1884) 21 Fed. 618, 623. In re Gregg (1862) 15 Wis. 531, 533. United States *v.* Blakeney (1847) 3 Gratt. 405, 414-415. United States *v.* Bainbridge (1816) Fed. Cas. No. 14,497, p. 951.

[6] In re Morrissey (1890) 137 U. S. 157, 159. United States *v.* Blakeney (1847) 3 Gratt. 405, 413.

[7] In re Grimley (1890) 137 U. S. 147, 151. In re Morrissey (1890) 137 U. S. 157, 159.

[8] In re Morrissey (1890) 137 U. S. 157, 159-160. In re Miller (1902) 114 Fed. 838, 842-843. United States *v.* Reaves (1903) 126 Fed. 127, 130. United States *v.* Bainbridge (1816) Fed. Cas. No. 14,497. p. 951. Baker *v.* Baker (1868) 41 Vt. 55, 57. Halliday *v.* Miller (1887) 29 W. Va. 424, 439. Gapen *v.* Gapen (1895) 41 W. Va. 422, 425. Iroquois Iron Co. *v.* Industrial Com. (1920) 294 Ill. 106, 109, 1 Schouler, Domestic Relations (6th ed.) § 754, p. 820.

condition on which the trial court found that the parents consented to the enlistment of their minor son.[9]

War risk insurance was made available to those in active military service for the greater protection of themselves and their dependents.[10] By the insurance contract, of which applicable provisions of statutes and regulations constitute a part,[11] the insured minor was authorized to allot a part of his pay for the payment of premiums,[12] to change beneficiaries without their consent[13] and to cancel the insurance in whole or in part.[14] It follows that the cancelation was valid and plaintiff is not entitled to recover.[15]

Reversed.

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[9] Utah Power & Light Co. *v.* United States (1917) 243 U. S. 389, 408-409. Wilber Nat. Bank *v.* United States (1935) 294 U. S. 120, 123-124.

[10] War Risk Insurance Act of October 6, 1917, § 400, 40 Stat. 409.

[11] White *v.* United States (1926) 270 U. S. 175. Lynch *v.* United States (1934) 292 U. S. 571, 577.

[12] War Risk Insurance Act of October 6, 1917, § 202, 40 Stat. 403.

[13] *Id.*, § 402, 40 Stat. 409: "... Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided ..." Bulletin No. 1, promulgated October 15, 1917: "The insured may at any time, subject to the regulations of the bureau, change the beneficiary or beneficiaries to any person or persons within the classes permitted by the act, without the consent of the beneficiary or beneficiaries." Regulations and Procedure, U. S. Veterans' Bureau, 1928 (Washington, 1930) Part 2, pp. 1235, 1237.

[14] T. D. 48 W. R. provides: "The yearly renewable term insurance shall ... lapse and terminate ... (c) Upon written request ... to the Bureau ... for cancelation of the insurance, in whole or in part, and corresponding cessation or reduction of the payment of premiums ..." Regulations and Procedure, U. S. Veterans' Bureau, 1928 (Washington, 1930) Part 1, pp. 19-20.

[15] White *v.* United States (1926) 270 U. S. 175, 180. Von der Lippi-Lipski *v.* United States (1925) 4 F. (2d) 168, 169. United States *v.* Sterling (1926) 12 F. (2d) 921, 922. Lewis *v.* United States (1932) 56 F. (2d) 563, 564. Irons *v.* Smith (1933) 62 F. (2d) 644, 646.